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# Domestic Violence in International Law

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# Abbreviations

CEDAW Committee on the Elimination of Discrimination Against Women

CHR Commission on Human Rights

CSW Commission on the Status of Women

DEVAW Declaration on the Elimination of Violence Against Women

ECHR European Convention for the Protection of Human Rights and Fundamental Freedoms

ECOSOC Economic and Social Council

GA General Assembly

HRC Human Rights Committee

ICCPR International Covenant on Civil and Political Rights

OAS Organization of American States

UN United Nations

Women's Convention Convention on the Elimination of All forms of  
Discrimination against Women

# 1 Introduction

Violence against women committed by men is a horrible offence, which affects not only the abused woman, but also women in general. For a long time the international community has refused to conceptualise domestic violence as a human rights violation. One reason for that is the fact that domestic violence is carried out in private behind closed doors. The traditional view on domestic violence is that it should be solved in private, without government's interference. Furthermore, acts of private individuals have not been seen as human rights violations for which the states are responsible. Recently, the international community has begun to address violence against women and has accepted that violence against women, also in private, is a human rights issue. International human rights law can and should therefore be used to combat domestic violence, in both domestic and international tribunals. The development of domestic legal systems that prevent this type of violence should be encouraged.

In order to understand why violence against women and domestic violence is of international concern, it is vital to understand the root cause to that violence, namely the subordinated place of women in society. Violence against women has inhibited women from enjoying the full benefits of their human rights. Violence not merely affects the individual woman, but women in general as it contributes to the subordination of women. The subordination of women is thus both the cause and consequence of domestic violence.

## 1.1 Purpose

Many rules of law exist for the benefit of individuals, but that does not mean that the rules necessary create rights for the individual. Therefore, you have to ascertain whether the rights exist directly under international law or whether the State parties are merely under obligation to grant municipal law for the individual concerned. To prove that the rights exist, one can see whether they give the individual access to an international tribunal in order to enforce their right. The purpose of my thesis is to examine, in the light of that, the status of domestic violence as a human rights violation. The special problem of domestic violence, as to the general issue of violence against women, is the responsibility of the state for the actions of private individuals. This problem will be discussed in the thesis.

I will examine whether and how the different legal instruments address violence against women and in particular domestic violence. I will also look into the enforcement mechanisms of the relevant human rights bodies of the United Nations and the regional organisations, to see what they are doing to

enforce the rights of women and how they combat domestic violence. Their efficiency and possible improvements will be discussed.

The material I have used is foremost relevant documents by the United Nations and the regional organisations, in addition to numerous articles.

## 1.2 Disposition and Delimitation

My thesis will provide an overview over the development and the current legal standard in the international community, relating to violence against women and in particular domestic violence. My premier emphasis is the organs of the United Nations and its instruments.

The thesis is divided into four main parts. The first chapter provides a short presentation of the nature, extent and cause of domestic violence. It also contains a background to and a summary of UN's work concerning this issue. The next two chapters give an overview of the international legal standard on domestic violence, divided into a presentation of the relevant treaty law and the relevant soft law. The fourth chapter deals with the relevant human rights bodies and their enforcement mechanisms. In that chapter I will concentrate on the Committee on the Elimination of Discrimination against Women, with a more exhaustive description of its reporting system and its individual complaint procedure.

The thesis concludes with an analysis of the international instruments and the enforcement mechanisms of the Human Rights bodies.

Since I have chosen to concentrate on the United Nations, the description of the UN- system is more exhaustive than the one for the regional organisations. In Sweden's point of view, the Council of Europe is the most interesting regional organisation. In regard to domestic violence the Organization of the American states is the most interesting, because of their special convention on the elimination of violence against women. For that reason I have chosen to only look into the Council of Europe and the Organization of American States.

## 1.3 Definitions

The following terms will be used in my thesis and therefore I will provide their definitions according to various international documents. **Gender-based violence**, the most general term, is defined as "violence directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of

liberty”.<sup>1</sup> The term **violence against women** is defined as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”<sup>2</sup> Violence against women has been divided into three categories whether it occurs in the family, in the community or whether it is perpetrated or condoned by the state.<sup>3</sup> **Violence in the family** has been defined by the Special Rapporteur on Violence Against Women as “violence perpetrated in the domestic sphere which targets women because of their role within that sphere or as violence which is intended to impact, directly and negatively, on women within the domestic sphere, such violence may be carried out by both private and public actors.”<sup>4</sup> The violence that occurs in the family includes battering, sexual abuse of female children, dowry related violence, incest, deprivation of food, marital rape, female genital mutilation other traditional practices harmful to women, non-spousal violence and violence related to exploitation. **Domestic violence** has been defined by the Special Rapporteur as “violence that occurs within the private sphere, generally between individuals who are related through intimacy, blood or law.”<sup>5</sup>

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<sup>1</sup> CEDAW General Recommendation No.19

<sup>2</sup> Declaration on the Elimination of Violence Against Women, article 1 and Beijing Platform for action, para. 113

<sup>3</sup> CEDAW General recommendation No 19 and report of the Special Rapporteur on Violence Against Women, UN Doc. E/CN.4/1995/42

<sup>4</sup> Report of the Special Rapporteur, UN Doc. E/CN.4/1996/53, at para. 28

<sup>5</sup> Report of the Special Rapporteur, UN Doc. E/CN.4/1996/53 at para.23

# 2 Domestic Violence

## 2.1 Nature of domestic violence

Domestic violence is a universal problem, which affects women all over the world. It exists in various forms in everyday life and takes place regardless of income, class or culture. The nature, extent and causes of domestic violence have been described in several documents and reports and therefore an exhaustive description is not intended here.

### 2.1.1 Extent of domestic violence

Violence committed in the home is a hidden problem, since most incidences are probably not reported to the police. It is therefore difficult to establish the full extent of domestic violence. Despite the difficulties, the existing figures indicate that violence against women in the home is a very common problem in most countries and is as great in developing countries as in industrialised.<sup>6</sup> Violence, with the vast majority of incidents committed by a member of the family or a close acquaintance, is estimated to affect one in five women across Europe.<sup>7</sup> The states are required to provide statistical data, on the incidence of violence of all kinds against women, in their reports to the treaty monitoring bodies of the United Nations.<sup>8</sup> However, the statistics are not always provided.

The Human Rights Watch provided an overview of the pervasiveness of domestic violence in a report in 1995. It was concluded that in many states domestic violence was not a crime or was not enforced. The violence was neglected by the states and there was complicity, in that the states did not approach intimate violence as a political and human rights issue.

Violence by the husband against his wife is the most prevalent form of domestic violence.<sup>9</sup> The most common manifestation of domestic violence is woman battering, but the violence can also be manifested as marital rape, incest, forced prostitution, violence against domestic workers, violence against the girl child, sex-selected abortions and female infanticide and traditional practices affecting the health of women and children.<sup>10</sup>

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<sup>6</sup> Report "Violence Against Women in the Family" United Nations New York, 1989

<sup>7</sup> Report from the Committee on Equal Opportunities for Women and Men in the Council of Europe Rapporteur: Mrs Olga Keltošová, Slovakia, European Democratic Group (Doc. 9525 17 July 2002), para. 26

<sup>8</sup> CEDAW General recommendation No. 12

<sup>9</sup> Report of the Special Rapporteur on Violence Against Women, UN Doc. E/CN.4/1995/42

<sup>10</sup> Report of the Special Rapporteur on Violence Against Women, UN Doc.E/CN.4/1996/53



## 2.1.2 Causes and consequences of domestic violence

The causes to domestic violence have been described and discussed in many works, and only a broad outline is attempted here. The general causes to domestic violence are to be found in the historically unequal power relations between men and women, but also in the sexuality of women and in cultural ideology. In addition, doctrines of privacy, patterns of conflict resolution and government inaction have contributed to the prevalence of domestic violence.<sup>11</sup> A UN report from 1989 entitled “Violence Against Women in the Family” analysed in detail the causes of family violence. The nature of domestic violence was described as a function of the belief, fostered in all cultures, that men are superior and that the women they live with are their possessions or belongings, which they can treat as they wish or consider appropriate. Beside the general causes, the report draw out more specific causes to domestic violence such as alcohol and drug abuse, a cycle of violence, “provocation”, economic and social factors and culture and structural inequality.<sup>12</sup> The importance, and what has been emphasised, is though the need to see the problem not only related to the perpetrator and individual causes. To understand gender-based violence, not as sporadic acts of few men, but symptomatic of the structural inequality in society, is crucial for advancing understanding within the global community.<sup>13</sup>

The consequences of domestic violence are grave for women in general and effects their lives in a very negative way. Elimination of violence against women is therefore essential for the development of women. The most significant long-term effect of wife battery, is the perpetration of the societal structure that keeps women inferior and subordinate to men politically, economically and socially. Violence against women in general and domestic violence in particular serves as essential components in societies, which oppress women. That is since violence against women not only derives from, but also sustains the dominated gender stereotypes and is used to control women in the one space traditionally dominated by women, the home.<sup>14</sup>

The United Nations and the regional organisations have expressed, in various documents, the view of domestic violence as a manifestation of historically unequal power relations between men and women and the subordination of women, as an impediment to women’s enjoyment of their human rights. This will be addressed below under the relevant documents.

The subordination of women is consequently both a cause and a consequence of domestic violence.

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<sup>11</sup> Report by the Special Rapporteur on Violence Against Women, UN Doc. E/CN.4/1996/53

<sup>12</sup> Report “Violence Against Women in the Family” United Nations New York, 1989

<sup>13</sup> Ursula A. O’Hare *Realizing Human Rights for Women* Human Rights Quarterly 21 (1996)

<sup>14</sup> Report of the Special Rapporteur on Violence Against Women, UN Doc. E/CN.4/1996/53

## 2.2 Background to the United Nations' work in regard to domestic violence

The concern for women's rights is relatively new on the international human rights agenda and the issue of violence against women even more recent. In the 1970s, women's rights concerned problems such as political and economic discrimination and participation in the development process by women of the third world. The year 1975 was proclaimed "International Women's Year" by the General Assembly and it was devoted to intensified action to promote equality between men and women, to ensure the full integration of women in the total development effort and to increase women's contribution to the strengthening of world peace.<sup>15</sup> The first World Conference on Women took place in Mexico City during that year. Its final document did not specifically address domestic violence, but mentioned the issue of family conflict.<sup>16</sup> Domestic violence was seen as something that should be solved within the family. After recommendation by the delegates to the Conference, the General Assembly proclaimed 1976-1985 to be the "United Nations Decade for Women".<sup>17</sup>

The adoption of the Convention on the Elimination of All forms of Discrimination against Women, in 1979, was a landmark for women's rights. The Declaration on the Elimination of Discrimination Against Women,<sup>18</sup> which already existed, had moral and political force, but did not create binding obligations. Therefore, encouraged by the results of the World Conference in 1975, which called for a "Convention on the Elimination of Discrimination Against Women", the Commission on the Status of Women drafted the Convention.<sup>19</sup>

At the Women Conference in Copenhagen in 1980, and in two resolutions by the ECOSOC in 1982 and 1984, the responsibility of the government for the prevention of domestic violence was recognised. With this, domestic violence went from being treated as a private issue to been seen as a public issue. The Nairobi Conference in 1985 acknowledged violence against women as a major obstacle in women's lives. Its final document explicit pointed out the relationship between the subordination of women in society and violence against women. The gender specific nature and the public nature of domestic violence was recognised, but violence against women

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<sup>15</sup> General Assembly resolution 3010 (XXVII)

<sup>16</sup> Report of the World Conference of the International Women's Year. World Plan of Action for the Implementation of the Objectives of the International Women's Year. E/CONF.66/34 (76.IV.) para.124

<sup>17</sup> General Assembly resolution 3520 (XXX) 15 December 1975 - United Nations Decade for Women: Equality, Development and Peace.

<sup>18</sup> The Declaration on the Elimination of Discrimination Against Women, General Assembly resolution 2263(XXII) of 7 November 1967

<sup>19</sup> [http://www.unhchr.ch/html/menu6/2/fs22.htm#\\*2](http://www.unhchr.ch/html/menu6/2/fs22.htm#*2)

was not categorise as a specific human rights abuse covered by the Women's Convention. In 1986 an expert group meeting on violence in the family took place. The report "Violence Against Women in the Family", based on the meeting, provided an overall picture of violence against women in the family as a world issue. It attempted to identify gaps in knowledge of the issue, which constitute obstacles to the development of a proper understanding of the problem and appropriate action for its eradication.<sup>20</sup> The first resolution by the General Assembly on violence against women came in 1986 and advocated criminological research on domestic violence.<sup>21</sup>

The Committee on the Elimination on Discrimination Against Women (CEDAW) stated in 1989 that a number of articles of the Women's Convention require States parties to act in order to protect women against violence of any kind, occurring within the family, at the workplace or in any other area of social life.<sup>22</sup> In 1992 CEDAW also interpreted the Women's Convention to include violence against women in its definition of discrimination.<sup>23</sup> That marked the first time a human rights treaty or convention was officially interpreted to explicitly prohibit violence against women. In 1993, the World Conference on Human Rights in Vienna advocated integration of women's rights into the mainstream human rights bodies of the United Nations. At the Vienna Conference and further at the fourth Women's Conference in Beijing in 1995 it was clearly stated that women's rights are human rights. The development in the years from 1993 to 1995, contributed to the classification of domestic violence as a human rights violation and violence against women was given international and national priority.

The Declaration on the Elimination of Violence Against Women was adopted by the General Assembly in 1993.<sup>24</sup> It was the result of efforts within the Commission on the Status of Women, who drafted the declaration, and the Economic and Social Council. In 1994, the Commission on Human Rights established a Special Rapporteur on Violence Against Women.<sup>25</sup>

Another landmark decision for women's right was taken in 1999, when the optional protocol to the Women's Convention, with the possibility of individual complaint, was adopted.<sup>26</sup>

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<sup>20</sup> Report "Violence Against Women in the Family" United Nations New York, 1989

<sup>21</sup> General Assembly resolution 40/36 of 29 November 1985

<sup>22</sup> CEDAW General Recommendation No.12

<sup>23</sup> CEDAW General Recommendation No. 19

<sup>24</sup> General Assembly resolution 48/104 of 20 December 1993

<sup>25</sup> Resolution 1994/45 of the Commission on Human Rights

<sup>26</sup> General Assembly resolution 54/4 of 6 October 1999

# 3 Treaty Law

## 3.1 Universal Treaties

One of the purposes of the United Nations is to promote and encourage universal respect for human rights and for fundamental freedoms for all, without distinction as to race, *sex*, language, or religion.<sup>27</sup> All members of the United Nations have pledged themselves to take joint and separate action, in co-operation with the United Nations, for the achievement of that purpose.<sup>28</sup>

The principles of the Universal Declaration on Human Rights have been transformed into binding, detailed rules of law in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The two Covenants together with the Universal Declaration are known as the International Bill of Human Rights.

The Convention on the Elimination of All forms of Discrimination against Women is the most extensive instrument dealing exclusively with the rights of women and for that it constitutes an International Bill of Rights for Women.

### 3.1.1 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the General Assembly in 1966 and entered into force in 1976.<sup>29</sup> The Covenant has so far been ratified by 148 states.<sup>30</sup>

According to the Covenant, each State party undertakes to respect and ensure to all individuals, within its territory and subject to its jurisdiction, the rights recognized in the Covenant, without distinction of any kind, such as race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status should be made.<sup>31</sup> The States parties also undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights in the Covenant.<sup>32</sup> Furthermore, it is stated that all persons are equal before the law and entitled, without any discrimination, to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and

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<sup>27</sup> Charter of the United Nations, articles 1 and 55

<sup>28</sup> Charter of the United Nations, article 56

<sup>29</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966

<sup>30</sup> as of 21 August 2002

<sup>31</sup> ICCPR, article 2.1

<sup>32</sup> ICCPR, article 3

effective protection against discrimination on any ground such as race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>33</sup> The principles of non-discrimination and equality are thus established in the Covenant.

The rights recognised in the ICCPR, which can be breached in case of domestic violence, are the inherent right to life (article 6), the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 7) and the right to liberty and security of person (article 9).

The Human Rights Committee has emphasised, in its comment on article 3 of the ICCPR, the importance of protecting the equal enjoyment by women of human rights. Accordingly, the States parties are under an obligation to take all necessary steps to enable every person to enjoy the rights provided for in the Covenant on an equal basis and in their totality. They must not only adopt measures of protection, but also positive measures in all areas as to achieve the effective and equal empowerment of women. According to the Committee, articles 2 and 3 mandate States parties to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions, which impair the equal enjoyment of rights, both in the public and the private sector. There shall thus be no restriction upon or derogation from the equal enjoyment by women of all fundamental human rights recognised or existing pursuant to law, conventions, regulations or customs, on the pretext that the Covenant does not recognise such rights or that it recognises them to a lesser extent.<sup>34</sup> In the view of Committee, the right to equal protection of the law in article 26 does not merely duplicate the guarantee already provided for in article 2, but provides in itself an autonomous right. It prohibits discrimination in law or in fact in any field regulated and protected by public authorities and is therefore concerned with the obligations imposed on States parties in regard to their legislation and the application thereof. This means that when a State party adopts new legislation its content should not be discriminating. The application of the principle of non-discrimination contained in article 26 is not only limited to those rights, which are provided for in the Covenant.<sup>35</sup> The right to equality before the law and freedom from discrimination, protected by article 26, requires States to act against discrimination by public as well as private agencies in all fields.<sup>36</sup>

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<sup>33</sup> ICCPR, article 26

<sup>34</sup> HRC General comment 28 Equality of rights between men and women (article 3) : 29/03/2000

<sup>35</sup> HRC General comment 18 Non-discrimination: 10/11/89

<sup>36</sup> HRC General comment 28 at para. 31

### **3.1.2 Convention on the Elimination of All forms of Discrimination against Women**

The Convention on the Elimination of All forms of Discrimination against Women (Women's Convention) was adopted by the General Assembly in 1979 and entered into force in 1981.<sup>37</sup> It has so far been ratified by 170 States<sup>38</sup> and is one of the international human rights instruments with the highest number of ratification. However, it is also one of the instruments with the most reservations.

The preamble of the Convention recalls that elimination of discrimination against women and promotion of equality between men and women are central principles of the United Nations and constitutes binding obligations under the UN Charter and the International Covenants on Human Rights. It states that discrimination against women violates the principles of equality of rights and respect for human dignity and is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries. Discrimination hampers the growth of the prosperity of society and the family and makes the full development of the potentialities of women more difficult.<sup>39</sup> By pointing out that extensive discrimination against women continues to exist, despite the existence of various instruments, the preamble indicates that the existing international human rights machinery has been insufficient to guarantee the protection of women's human rights.

The Women's Convention was to reinforce the provisions of existing international instruments designed to combat discrimination against women. It identifies many specific areas where there has been notorious discrimination against women, for example in regard to political rights, marriage and the family, and employment. In these and other areas the Convention spells out specific goals and measures to be taken in order for women to enjoy full equality with men and the full realisation of their guaranteed human rights.

Discrimination against women is defined as "any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."<sup>40</sup> The Convention establishes, in addition to the specific obligations, a comprehensive obligation to eliminate discrimination in all its forms. Accordingly, the States parties shall "take in

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<sup>37</sup> General Assembly resolution 34/180 of 18 December 1979

<sup>38</sup> as of 21 August 2002

<sup>39</sup> The Convention on the Elimination of All Forms of Discrimination against Women, preamble

<sup>40</sup> Women's Convention, article 1

all fields, in particular the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”<sup>41</sup>

The Women’s Convention expressly covers states’ responsibility for violations by private actors, as the states are required “to take all appropriate measures to eliminate discrimination against women *by any person, organization or enterprise*”.<sup>42</sup>

With the exception of article 6, concerning trafficking in women and exploitation of prostitution, gender-based violence is not explicitly addressed in the Convention. Gender-based violence has though been included in the definition of discrimination against women by the Committee on the Elimination of Discrimination Against Women in accordance with its general recommendation no. 19.

### **3.1.2.1 General recommendation no. 19**

The Committee on the Elimination of Discrimination Against Women (CEDAW) adopted in 1992 its general recommendation No.19 on violence against women. The recommendation clearly states that the definition of discrimination, in article 1 of the Convention on the Elimination of All forms of Discrimination against Women, includes gender-based violence. Consequently, gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, may breach specific provisions of the Convention regardless of whether those provisions expressly mention violence. The human rights and fundamental freedoms impaired, include for example, the right to life, the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, the right to equal protection under the law and the right to the highest standard attainable of physical and mental health.<sup>43</sup>

The recommendation comments specific articles of the Convention and how they relate to violence.<sup>44</sup> Regarding article 5 (modify the social and cultural patterns of conduct of men and women) it is pointed out that “traditional attitudes by which women are regarded as subordinated to men or as having stereotyped roles perpetuate widespread practises involving violence or coercion, such as family violence and abuse and such prejudices and practises, may justify gender-based violence as a form of protection or control of women. The effect of such violence on the physical and mental integrity of women is to deprive them of the equal enjoyment, exercise and

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<sup>41</sup> Women’s Convention, article 3

<sup>42</sup> Women’s Convention, article 2 (e)

<sup>43</sup> CEDAW General Recommendation no. 19, para. 6-7

<sup>44</sup> Women’s Convention, articles 5, 6 11, 12, 14 and 16

knowledge of human rights and fundamental freedoms. The consequence of these forms of gender-based violence help to maintain women in subordinate roles and contribute to their low level of political participation and to their lower education, skills and work opportunities.”<sup>45</sup> Further, the recommendation states that “family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships, women of all ages are subjected to violence of all kinds, including battering, rape and other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence and coercion. These forms of violence put women’s health at risk and impair their ability to participate in family life and public life on a basis of equality.”<sup>46</sup>

Discrimination under the Convention is not restricted to action by or on behalf of Governments, and therefore the States parties are recommended to take all appropriate and effective legal measures to overcome all forms of gender-based violence, irrespective of whether it is a public or private act. It is underlined that under general international law and specific Human Rights Covenants, states may be responsible also for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation. The measures that should be taken are, among other things, to adopt laws against family violence including criminal penalties and civil remedies, provide protective and support service, gender-sensitive training and encourage research on violence. The States parties have also to ensure the safety and security of victims of family violence and provide rehabilitation programs for perpetrators of domestic violence.<sup>47</sup>

## **3.2 Regional Treaties**

In this chapter, the Council of Europe and the Organization of American State will be examined. Both of them have adopted Conventions protection human rights, similar to the ICCPR, but the Organization of American State has moreover adopted a special Convention on the Elimination on Violence Against Women.

### **3.2.1 European Convention for the Protection of Human Rights and Fundamental Freedoms**

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of the Council of Europe was adopted in

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<sup>45</sup> CEDAW General Recommendation No 19, para.11

<sup>46</sup> CEDAW General Recommendation No 19, para.23

<sup>47</sup> CEDAW General Recommendation No 19, para.24



1950, inspired by the Universal Declaration of Human Rights.<sup>48</sup> All 44 Member States have ratified the Convention. In doing so they have undertaken to secure to everyone, within their jurisdiction, the rights and freedoms defined in the Convention.<sup>49</sup> The enjoyment of the rights and freedoms should be secured without discrimination on any ground such as *sex*, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.<sup>50</sup> The rights to life, the prohibition of torture, inhuman or degrading treatment or punishment and everyone's rights to liberty and security are covered by the European Convention.<sup>51</sup>

The European Court of Human Rights has, in its caselaw, considered that the obligation to secure to everyone the rights and freedoms, together with article 3, requires States parties to take measures to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment. This includes ill treatment carried out by private individuals. Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity.<sup>52</sup>

Violence against women is not explicitly mentioned in the Convention and the Council of Europe has not adopted any special treaty on violence against women. Recommendations have though been adopted on the subject, both of the Parliamentary Assembly and of the Committee of Ministers. In the recommendation by the Committee of Ministers the governments of the member states are recommended to guarantee women the recognition, enjoyment, exercise and protection of their human rights and fundamental freedoms, in view of the provisions of the European Convention on Human Rights and the case-law of its organs.<sup>53</sup> Recommendations are however not binding on the Member States.

### **3.2.2 American Convention on Human Rights**

The American Convention on Human Rights of the Organization of American States was signed in 1969 and entered into force in 1978. On the lines of the ICCPR and the European Convention, the States Parties have undertaken to respect the rights and freedoms recognised in the Convention. They are to ensure to all persons, subject to their jurisdiction, the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, *sex*, language, religion, political or other opinion,

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<sup>48</sup> The European Convention for the Protection of Human Rights and Fundamental Freedoms

<sup>49</sup> ECHR, article 1

<sup>50</sup> ECHR, article 14

<sup>51</sup> ECHR, articles 2, 3 and 5

<sup>52</sup> *A. v. the United Kingdom*, judgement of 23 September 1998, Reports 1998 IV

<sup>53</sup> Rec(2002)5 of the Committee of Ministers

national or social origin, economic status.<sup>54</sup> All persons shall be equal before the law and entitled, without discrimination, to equal protection of the law.<sup>55</sup> The American Convention protects the right to life, the rights not to be subjected to torture or to cruel, inhuman, or degrading punishment or treatment and the right to personal liberty and security.<sup>56</sup>

### **3.2.2.1 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women**

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, also known as the Convention of Belém do Pará, was adopted in 1994 and has to date been ratified by 31 member states.<sup>57</sup> It is the first regional human rights treaty to focus exclusively on gender-based violence and to prohibit violence within the home. The Convention reflects the work of Latin American women, who have been particularly active in working to confront domestic violence and to identify it as a human rights violation.<sup>58</sup>

Violence against women is defined in the Convention as "any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere".<sup>59</sup> The Convention asserts an independent free-standing right of every woman to be free from violence in both public and private spheres.<sup>60</sup> That includes, among others, the rights of women to be free from all forms of discrimination and to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination.<sup>61</sup> Every woman has furthermore the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments.<sup>62</sup> In order to ensure the right to be free from violence a number of positive obligations are imposed upon the States Parties. Those obligations are, for example, to refrain from engaging in any act or practice of violence against women, to apply due diligence to prevent, investigate and impose penalties and to adopt legal measures and other specialised measures.<sup>63</sup>

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<sup>54</sup> American Convention on Human Rights, article 1

<sup>55</sup> American Convention on Human Rights, article 24

<sup>56</sup> American Convention on Human Rights, articles 4, 5 and 7

<sup>57</sup> Adopted in Belém do Pará, Brasil, on June 9 1994 at the twenty fourth regular session of the General Assembly

<sup>58</sup> Ursula A. O'Hare *Realizing Human Rights for Women* Human Rights Quarterly 21 (1996)

<sup>59</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, article 1

<sup>60</sup> Convention of Belém do Pará, article 3

<sup>61</sup> Convention of Belém do Pará, article 6

<sup>62</sup> Convention of Belém do Pará, article 4

<sup>63</sup> Convention of Belém do Pará, articles 7 and 8

In order to enforce the right to be free from violence, the Convention provides both a reporting system<sup>64</sup> and a right to an individual complaint procedure<sup>65</sup>.

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<sup>64</sup> Convention of Belém do Pará, article 10

<sup>65</sup> Convention of Belém do Pará, article 12

# 4 Soft Law

## 4.1 Declarations

### 4.1.1 Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted in 1948.<sup>66</sup> It states that “all human beings are born free and equal in dignity and rights”.<sup>67</sup> Discrimination is prohibited since “everyone is entitled to all the rights and freedoms set forth, without distinction of any kind, such as race, colour, *sex*, language religion, political or other opinion, national or social origin, property, birth or other status.”<sup>68</sup> The rights and freedoms are amongst others the right to life, liberty and security of person and the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.<sup>69</sup> The Universal Declaration is a resolution adopted by the General Assembly and as such it is not binding on the Member States. According to article 55 of the UN-Charter the Member States have though an obligation to co-operate with the UN and from that follows that states are somewhat obliged to follow its provisions.

### 4.1.2 Declaration on the Elimination of Violence against Women

The Declaration on the Elimination of Violence Against Women (DEVAW) was adopted by the General Assembly in 1993.<sup>70</sup> It is the first real set of international standards to deal specifically with violence against women.

The preamble of the Declaration recognises the urgent need for universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings. It also notes that those rights and principles are enshrined in international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

DEVAW is presented as a measure to strengthen and complement the process of ensuring the effective implementation of the Women’s

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<sup>66</sup> General Assembly resolution 217 A (III) of 10 December 1948

<sup>67</sup> The Universal Declaration of Human Rights, article 1

<sup>68</sup> The Universal Declaration of Human Rights, article 2

<sup>69</sup> The Universal Declaration of Human Rights, article 3 and 5

<sup>70</sup> General Assembly resolution 48/104 of 20 December 1993

Convention. Its aim is to provide a clear and comprehensive definition of violence against women and a clear statement of the rights to be applied in order to ensure the elimination of violence against women.<sup>71</sup> The declaration states that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>72</sup> States should condemn violence against women and not invoke any custom, tradition or religious consideration to avoid their obligations, with respect to its elimination. They should also pursue by all appropriate means and without delay a policy of eliminating violence against women. To this end, the States should 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. The states should further develop legal measures and other measures for the elimination of violence against women.<sup>73</sup>

The declaration is not only addressed to the member states but also to the United Nations. Their organs and specialised agencies should, within their respective fields of competence, accordingly contribute to the recognition and realisation of the rights and principles set forth in the Declaration.<sup>74</sup>

## **4.2 UN Conferences**

Conference's documents of the United Nations are not legally binding in the same manner as are treaties and conventions. Their strength lies in the representation of the general consensus of the international community regarding fundamental human rights standard. The documents can be signposts of the direction in which international human rights law is developing. They should influence states, which have accepted a commitment of progressive development toward enhanced respect for human rights, in their international conduct and domestic law.<sup>75</sup>

### **4.2.1 Four Global Women's Conferences in 1975-1995**

The United Nations has convened four "World Conferences on Women" in which delegations of UN member states, UN-bodies and agencies, inter-governmental bodies, women's organisations and other NGO's have participated to a large extent. The Conferences have elevated the cause of gender equality to the very centre of the global agenda and have united the international community behind a set of common objectives with an effective plan of action for the advancement of women everywhere, in all

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<sup>71</sup> Declaration on the Elimination on Violence Against Women, preamble

<sup>72</sup> DEVAW, article 3

<sup>73</sup> DEVAW, article 4

<sup>74</sup> DEVAW, article 5

<sup>75</sup> Cheryl Thomas *Domestic Violence in Women and International Human Rights Law* Volume 1 (1999)

spheres of public and private life.<sup>76</sup> The Conferences have given an impact and proven to be effective in regard to domestic violence, with numerous changes taken place upon suggestions made by the delegates. The three-part theme: equality, development and peace has ran through the Women's Conferences since the first World Conference on Women in Mexico City in 1975.

#### **4.2.1.1 World Conference of the International Women's Year**

The final document of the World Conference of the International Women's Year in 1975 did not specifically address domestic violence. However, it mentioned the issue of family conflict. It was stated that the family in modern society, which is changing in its economic, social and cultural functions, should ensure the dignity, equality and security of each of its members.<sup>77</sup> In order to assist in the solution of conflicts arising among members of the family, adequate family counselling service should be set up wherever possible as a national action and family courts should be established.<sup>78</sup>

#### **4.2.1.2 World Conference of the United Nations Decade for Women: Equality, Development and Peace**

In 1980, the second World Conference on Women was held in Copenhagen.<sup>79</sup> The increasing public awareness of the need to eliminate all forms of violence against women, including domestic violence, was reflected at the Conference. The final document, the Programme of Action, included national strategies for accelerating the full participation of women in economic and social development. One of those strategies was the enactment and implementation of national legislation in order to prevent domestic and sexual violence against women. Victims of violence should be fairly treated in all criminal procedures and to allow that all appropriate measures, including legislative ones, should be taken. The Programme of Action advocated research into the extent and causes of domestic violence and provision of effective help, such as the establishment of centres for treatment, shelter and counselling for women who are victims of violence.<sup>80</sup> A resolution "Battered women and violence in the family", was produced and it emphasised the complexity of domestic violence and how it constitutes an intolerable offence to the dignity of human beings.

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<sup>76</sup> <http://www.un.org/womenwatch/daw/followup/session/presskit/hist.htm> 2002-11-01

<sup>77</sup> The report of the World Conference of the International Women's Year. World Plan of Action for the Implementation of the Objectives of the International Women's Year. E/CONF.66/34 (76.IV.) para.124

<sup>78</sup> World Plan of Action for the Implementation of the Objectives of the International Women's Year, para. 131

<sup>79</sup> General Assembly resolution 33/185 of 29 January 1979, The sub-theme for the Conference was "Employment, Health and Education"

<sup>80</sup> Programme of Action for the Second Half of the United Nations Decade for Women: Equality, Development and Peace. A/CONF. 84/34 (80.IV.3)

#### **4.2.1.3 World Conference to Review and Appraise the Achievements of the United Nations Decade for Women**

At the third Women's Conference in Nairobi in 1985, violence against women was referred to and identified as a major obstacle in the lives of women. The final document, the Nairobi Forward Looking Strategies, presented basic strategies to confront the obstacles to the Decade of Women's goals and objectives (equality, development and peace) for the advancement of women.<sup>81</sup> Building on principles of equality it reaffirmed the international concern regarding the status of women and provided a framework for renewed commitment by the international community to the advancement of women and the elimination of gender-based discrimination.

In the Nairobi Forward Looking Strategies, which was intended to provide a practical and effective guide for global action on a long-term basis, violence against women was treated as one of the critical areas of concern. Foremost, it was seen as a major obstacle to the achievement of peace, but also to the other objectives, and should be given special attention. It was acknowledged that violence against women exists in various forms in everyday life and that women in all societies are beaten, mutilated, burned, sexually abused and raped.<sup>82</sup>

National machinery should be established in order to deal with the question of violence against women within the family and society. The Governments should undertake effective measures to identify, prevent and eliminate all violence, including family violence, against women and children and to provide shelter, support and reorientation services for abused women and children. These measures should notably be aimed at making women conscious that maltreatment is not an incurable phenomenon, but a blow to their physical and moral integrity. Beyond protective measures for maltreated women and children and repressive measures for the authors of the maltreatment, the document also advocated long-term supportive machinery of aid and guidance for maltreated women and children, as well as the men who maltreat them.<sup>83</sup> The Governments should increase public awareness of violence against women as a societal problem and establish policies and legislative measures to ascertain its causes and prevent and eliminate such violence in particular by suppressing degrading images and representations of women in society.<sup>84</sup>

#### **4.2.1.4 Fourth World Conference on Women**

The fourth World Conference on Women was held in Beijing in 1995. In the ten years passed since the Nairobi Conference, there had been significant

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<sup>81</sup> Nairobi Forward-Looking Strategies for the Advancement of Women during the Period from 1986 to the Year 2000

<sup>82</sup> Forward-Looking Strategies, para. 258

<sup>83</sup> Forward-Looking Strategies, para 231

<sup>84</sup> Forward-Looking Strategies, para. 288

progress achieved at the international level towards the elimination of violence against women. These progress were demonstrated in the final documents of the Conference, the Beijing Declaration and the Platform for Action, which showed a deeper understanding and openness surrounding the divers implications of violence against women.

The Beijing Declaration clearly stated that women's rights are human rights. The participating governments reaffirmed in it their commitment to ensure the full implementation of the human rights of women and the girl child as an integral and indivisible part of all human rights and fundamental freedoms. They also expressed their determination to prevent and eliminate all forms of violence against women and girls and to promote and protect all human rights of women and girls.<sup>85</sup>

The Platform for Action was presented as an agenda for women's empowerment. It aimed at accelerating the implementation of the Nairobi Forward-looking Strategies and at removing all the obstacles to women's active participation in all spheres of public and private life.<sup>86</sup> Violence against women was recognised as one of the obstacles to the achievement of equality, development and peace. The document stated that such violence both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. It further observed that women and girls are subjected to physical, sexual and psychological abuse in all societies, to a greater or lesser degree, regardless of income, class or culture. The low social and economic status of women can be both a cause and a consequence of violence against women. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed.<sup>87</sup> In order to do so the Platform for Action drew out concrete actions to be taken by the Governments. They were to take integrated measures to prevent and eliminate violence against women and to study the causes and consequences of violence against women and the effectiveness of preventive measures. The Platform for Action called on all governments to develop implementation strategies or plans of action as soon as possible, in consultation with relevant institutions and non-governmental organisations. These implementation strategies should be comprehensive, have time-bound targets and benchmarks for monitoring, and include proposals for allocating or reallocating resources for implementation.<sup>88</sup> Non-governmental organisations should be encouraged to contribute to the design and implementation of these strategies or national plans of action.<sup>89</sup>

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<sup>85</sup> Beijing Declaration

<sup>86</sup> Report of the Fourth World Conference on Women, mission statement

<sup>87</sup> Beijing Platform for Action, para. 112

<sup>88</sup> Beijing Platform for Action, para. 297

<sup>89</sup> Beijing Platform for Action, para 298



The Division for the Advancement of Women asked all UN Members States to supply copies of these strategies/plans of action and 118 countries had, as of April 2000, submitted such a national plan.<sup>90</sup>

Five years after the Fourth World Conference on Women the General Assembly decided to convene a special session, to review the progress in the implementation of the Nairobi Forward-looking Strategies for the Advancement of Women, the Beijing Declaration and the Platform for Action.<sup>91</sup> This twenty-third special session of the General Assembly, entitled “Women 2000: gender equality, development and peace for the twenty-first century”, took place at the United Nations Headquarters in New York in 2000. The focus was the progress made and the remaining obstacles to the implementation to the Platform for Action.<sup>92</sup> It adopted a Political Declaration and an outcome document entitled “further actions and initiatives to implement the Beijing Declaration and Platform for Action.” It set out achievements made and remaining obstacles in regard to violence against women.<sup>93</sup>

#### **4.2.2 World Conference on Human Rights**

The Second World Conference on Human Rights took place in Vienna in 1993, two years before the Beijing Conference. It marked the culmination of a long process of review and debate over the current status of human rights machinery in the world and was the beginning of a renewed effort to strengthen and further implement the body of the UN human rights instruments. The outcome document, the Vienna Declaration and the Programme of Action, presented to the international community a common plan for the strengthening of human rights work around the world.<sup>94</sup> The document made concrete recommendations for strengthening and harmonising the monitoring capacity of the United Nations system and it called for the establishment of a High Commissioner for Human Rights by the General Assembly, which subsequently created the post in December 1993.<sup>95</sup>

The importance of mainstreaming human rights of women was particularly pointed out in the Programme of Action. The human rights of women should form an integral part of the United Nations’ human rights activities and violations of women’s human rights, including gender-specific abuses should regularly be address.<sup>96</sup> There should also be increased co-operation and integration of objectives and goals between the Commission on the Status of Women, the Commission on Human Rights, the Committee for the

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<sup>90</sup> <http://www.un.org/womenwatch/confer/beijing/national/natplans.htm>

<sup>91</sup> General Assembly resolution 52/100

<sup>92</sup> <http://www.un.org/womenwatch/daw/followup/bfbeyond.htm> 2002-11-01

<sup>93</sup> General Assembly resolution S-23/2 adopted at its twenty-third special session.

<sup>94</sup> <http://www.unhchr.ch/html/menu5/wchr.htm> 2002-11-01

<sup>95</sup> General assembly resolution 48/141

<sup>96</sup> Vienna Declaration and Programme of Action (A/CONF.157/24) 25 June 1993, para. 18

Elimination of Discrimination against Women, the United Nations Development Fund for Women, the United Nations Development Programme and other United Nations agencies.<sup>97</sup> States should be encouraged to supply information on the situation of women in their reports to the treaty monitoring bodies, which should include the status of women and the human rights of women in their deliberations and findings and make use of gender-specific data.<sup>98</sup>

The Vienna Conference had an important impact with regard to violence against women, as it was identified as “a violation of human rights”. The Programme of Action stated, what was later reaffirmed in Beijing, that the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex were acknowledged as priority objectives of the international community. Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, were considered incompatible with the dignity and worth of the human person, and must be eliminated.

The Conference also promoted the adoption of the Declaration on Violence Against Women and the optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in addition to the promotion of the creation of a Special Rapporteur on violence against women.<sup>99</sup>

Five years after the Vienna Conference, a review of the implementation took place. The review provided a framework for a comprehensive and future-oriented evaluation of the promotion and protection of human rights at both international and national levels.<sup>100</sup>

### **4.3 State responsibility and due diligence**

The theory of State responsibility for actions by private non-State actors and the standard of due diligence has developed in international law doctrine and in international case law. The doctrine has partly been incorporated into the international legal instruments. The question of domestic violence brings into focus state responsibility for actions of private citizens. Traditionally only a state and its agents can commit a human rights violation under international law, since international human rights law does not generally bind private individuals and agencies. The perpetrators of domestic violence are by definition private individuals and cannot be treated as appropriate

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<sup>97</sup> Vienna Declaration and Programme of Action at para 37

<sup>98</sup> Vienna Declaration and Programme of Action at para 42

<sup>99</sup> Vienna Declaration and Programme of Action at para 38-40

<sup>100</sup> (<http://www.unhchr.ch/html/50th/vdparev.htm>) 2003-01-07

subjects of international human rights law. On the other hand, in the theory of state responsibility it is implicit that a state has some duty to protect those within its territory from private acts of violence and illicit force. The States are therefore held legally responsible for acts or omissions of private persons in four different cases.

- 1 If the person is an agent of the state.
- 2 If private acts are covered by provisions of a treaty obligation.
- 3 If there is State complicity in the wrongs perpetrated by private actors.
- 4 If a state fails to exercise “due diligence”.

The “due diligence” standard has been generally accepted as a measure of evaluating a State’s responsibility for violation of human rights by private actors. It is a measure whether a state has acted with sufficient effort and political will to fulfil its human rights obligations. When the state makes little or no effort to stop a certain form of private violence, it can be said to have tacitly condoned that violence. The standard, developed by customary international law, has expanded through case law. In the case *Velasquez Rodriguez*, from the Inter-American Court of Human Rights, liability was imposed on Honduras for its lack of due diligence in preventing unexplained “disappearances”, whether by the State or private actors. According to the Court, a government is required to “take reasonably steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within this jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation”. The Court clearly stated that a single violation of human rights or just one investigation, with an ineffective result, does not establish a lack of due diligence by a State. The test is whether the State undertakes its duties seriously. The due diligence encompasses the obligation both to provide and enforce sufficient remedies to survivors of private violence.<sup>101</sup>

The responsibility of states is consequently not simply not to engage in human rights violations themselves, but to meet international obligations to deter and condemn violations initiated by private individuals. It includes taking appropriate action to prevent objectionable private action, to monitor private acts that constitutes violations, for instance through human rights monitors, and to sanction and remedy acts of violations that are identified.<sup>102</sup>

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<sup>101</sup> *Velasquez Rodriguez* case, July 29 1988 Series C No. 4. I/A Court H.R.

<sup>102</sup> Rebecca J. Cook “*State Accountability Under the Women’s Convention*” in *Human Rights of Women –National and International perspective*, Cook (1994)

# 5 Human Rights Bodies

This chapter will present the Charter-based and the Treaty-based bodies of the United Nations and the main bodies of the Council of Europe and the Organization of American States.

## 5.1 Charter-based bodies of the United Nations

The General Assembly has the widest mandate of the UN-bodies, as it may discuss any questions or any matters within the scope of the Charter.<sup>103</sup> It shall initiate studies and make recommendations for the purpose of assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>104</sup> The Economic and Social Council (ECOSOC) is one of the principal organ of the UN and co-ordinates the work of the UN specialised agencies, functional commissions and regional commissions. ECOSOC issues policy recommendations to the UN system and to the Member States. One of its responsibilities is the encouragement of universal respect for human rights and fundamental freedoms. It may also call international conferences on matters falling within its competence.<sup>105</sup> In accordance with the Charter, the ECOSOC has set up the Commission on Human Rights and the Commission on the Status of Women.<sup>106</sup>

### 5.1.1 Commission on Human Rights

The Commission on Human Rights (CHR) was set up in 1946. It is the main body dealing with human rights issues, as it may deal with any matter relating to human rights. The Commission is composed of 53 States members. Its task is to make studies, prepare recommendations and draft international instruments relating to human rights. Its meetings take place each year in regular session for six weeks, but special session can exceptionally take place if there is a need for dealing with urgent and acute human rights situations. During its regular annual session, the Commission adopts about a hundred resolutions, decisions and Chairperson's statements on matters of relevance to individuals in all regions and circumstances. The human rights of women are one of the main themes of the Commission.<sup>107</sup> The elimination of violence against women and the question of integrating the rights of women into the human rights mechanisms of the UN have been addressed in several of its resolutions.

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<sup>103</sup> Charter of the United Nations, article 10

<sup>104</sup> Charter of the United Nations, article 13

<sup>105</sup> Charter of the United Nations, article 62

<sup>106</sup> Charter of the United Nations, article 68

<sup>107</sup> <http://www.unhchr.ch/html/menu2/2/chr.htm> 2003-01-07

The Commission on Human Rights and the Economic and Social Council have established a number of extra-conventional procedures and mechanisms, which have been entrusted to either working groups or to independent individuals, variously designated special rapporteurs, representatives or experts. The mandates given to such procedures and mechanisms are either to examine, monitor and openly report on human rights situations in specific countries or on major phenomena of human rights violations world.<sup>108</sup> An example of such a thematic mechanism is the Special Rapporteur on violence against women.

#### **5.1.1.1 Special Rapporteur on Violence Against Women**

The Commission on Human Rights decided in 1994 to appoint a Special Rapporteur on violence against women, its causes and consequences.<sup>109</sup> The Rapporteur, Ms. Radhika Coomaraswamy from Sri Lanka, was appointed for a three-year-period, but the mandate has since been renewed twice for a period of three years each.<sup>110</sup>

##### **5.1.1.1.1 Mandate**

The work of the Special Rapporteur is to be done within the framework of the Universal Declaration of Human Rights and all other international human rights instrument, including the Convention on the Elimination of All Forms of Discrimination against women. The Rapporteur has to report to the Commission on Human Rights on an annual basis. The mandate of the Special Rapporteur is to seek and receive information on violence against women from Governments, treaty bodies, specialised agencies, other special rapporteurs, intergovernmental and non-governmental organisations, including women's organisations, and to respond effectively to such information. The task is moreover to recommend measures, ways and means, at the national, regional and international level to eliminate violence against women and its causes, and to remedy its consequences. The Special Rapporteur should work closely with other special rapporteurs, special representatives, working groups and independent experts of the CHR and the Sub-Commission on the Promotion and Protection of Human Rights and with the treaty bodies. All Governments are requested to co-operate with and assist the Special Rapporteur.<sup>111</sup>

##### **5.1.1.1.2 Working methods and activities**

The Special Rapporteur has established procedures to seek clarifications and information from Governments on specific cases of alleged violence in order to identify and investigate specific situations and allegations of violence in

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<sup>108</sup> <http://www.unhchr.ch/html/menu2/2/mechanisms.htm> 2002-09-15

<sup>109</sup> Resolution 1994/45 of the Commission on Human Rights

<sup>110</sup> Resolution 1997/ 44 and 2000/45 of the Commission on Human Rights

<sup>111</sup> Resolution 1994/45 of the Commission on Human Rights

any country. This is done with a view to find durable solutions for the problem of violence against women in all societies. For reporting on alleged cases of gender-based violence the Special Rapporteur has prepared a standard format since the information often lacks details. The Special Rapporteur makes field visits in different countries to examine the situation on violence against women. On the issue of domestic violence she has for example visited Brazil and Cuba. The Special Rapporteur also participates in conferences and meetings. At the Fourth World Conference on Women she actively participated in the preparatory process and in the Conference itself by convening a panel discussion on “Violence against women, its causes and consequences”.<sup>112</sup>

The Special Rapporteur has produced a number of reports concerning violence against women in which she sees the problem from different points of view. Her preliminary report provides an overview of general issues, concerning the problems arising from different types of violence against women, while the subsequent reports deal more specifically with the areas of violence in the family, violence in the community and violence by the State, providing detailed recommendations.<sup>113</sup>

Violence in the family and domestic violence is dealt with in two reports. In the first report measures to be taken at the national level and at the international level are recommended and a framework for model legislation on domestic violence has been provided. The framework outlines important elements integral to comprehensive legislation on domestic violence. The objective of the model legislation is to serve as a drafting guide to legislatures and organisations committed to lobbying their legislatures for comprehensive legislation on domestic violence. The Special Rapporteur urges the states to develop expansive strategies in order to fulfil their international obligations effectively, since the due diligence standard is not limited to legislation or criminalisation only.<sup>114</sup>

In the second report she provides a systematic review of States compliance with their international obligations in respect of domestic violence. The governments were requested to provide her with a written account and copies of the measures taken since 1994. Information on national plans, statistics, training and support service for victims was also sought from both governments and NGOs. The picture presented suggested that governments are taking steps, as small as they may be, to address violence in the family. They had begun to acknowledge that violence against women in the family is a serious social issue that should be confronted, and formal provisions and policies had been adopted in several states. The Governments lacked though

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<sup>112</sup>Report of the Special Rapporteur on Violence Against Women, UN Doc. E/CN.4/1996/53, para.7-11

<sup>113</sup> Report of the Special Rapporteur on Violence Against Women, UN Doc. E/CN.4/1995/42

<sup>114</sup> Report of the Special Rapporteur on Violence Against Women, UN Doc. E/CN.4/1996/53

the necessary expertise to develop and implement policy relating to violence against women. Governments' actors in general, and those within the criminal justice system in particular, continued to subscribe to myths about the role of women in society and the family, and about the causes of violence in the family.<sup>115</sup>

#### **5.1.1.2 The 1503- procedure**

Besides the extra-conventional procedures and resolutions, the best known and major procedure for the reception and consideration of complaints as a source of information on human rights situations in individual countries or for policy development along thematic lines, is the so-called 1503 procedure. It is intended to identify situations in which there appears to be a consistent pattern of gross and reliably attested violations of human rights in order for the Commission on Human Rights to take appropriate action. A communication is accepted for examination if there are reasonable grounds to believe that a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms exist. Individuals or groups who claim to be victims of human rights violations or who have direct, reliable knowledge of violations may submit communications. Anonymous communications are inadmissible. Domestic remedies must have been exhausted before a communication is considered. To select the communications an initial examination is made by a working group of the Sub-Commission for the Promotion and Protection of Human Rights, who assists the Commission on Human Rights in its work. The communications are then referred to the full Sub-Commission, which may refer situations to the Commission on Human Rights for its consideration. Those who submit communications play no formal role in the process after their communications have been submitted. The whole procedure is confidential unless and until the Commission on Human Rights decides to make recommendations to the ECOSOC.<sup>116</sup> In 2000 the 1503 procedure was reformed<sup>117</sup>.

### **5.1.2 Commission on the Status of Women**

The Commission on the Status of Women (CSW) was set up in 1946, as a parallel body to the Commission on Human Rights. It consists of 45 States members and meets once a year for a period of two weeks. Its functions are to prepare recommendations and reports to the ECOSOC on promoting women's rights in political, economic, social and educational fields. Another task is to make recommendations on urgent problems requiring immediate attention in the field of women's rights, with the object of implementing the principle that men and women shall have equal rights, and

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<sup>115</sup> Report of the Special Rapporteur on Violence Against Women "Integration of the Human Rights and the gender perspective", UN Doc. E/CN.4/1999/68

<sup>116</sup> ECOSOC resolution 1503 (XLVIII)

<sup>117</sup> ECOSOC resolution 2000/3

to develop proposals to give effect to such recommendations. The Commission adopts its own resolutions and decisions together with the preparation of draft resolutions and decisions.<sup>118</sup> The Women's Convention and the Declaration on the Elimination of Violence Against Women were both drafted by the CSW. The Commission has been given the task of reviewing and appraising the implementation of the Beijing Platform for Action. In order to do so it examines the mainstreaming of a gender perspective in the activities of the UN-organs. It offers input into the wider reviews of co-ordination and operational activities to be undertaken by the ECOSOC.<sup>119</sup>

#### **5.1.2.1 Communication procedure**

The Commission on the Status of Women is able to receive communications from individuals and groups of individuals concerning discrimination against women. However, the communications procedure does not provide an avenue for redress for the individual since it does not allow action to be taken on individual complaints. Instead it aims to discern patterns and emerging trends in order to develop policy recommendations to solve widespread problems. The main purpose is accordingly to provide a source of information about violations against women that can assist the Commission in its task of policy formulation and development of further strategies for the advancement of women. The communication procedure is similar to the 1503 procedure.<sup>120</sup>

## **5.2 Treaty-based bodies of the United Nations**

### **5.2.1 Human Rights Committee**

The Human Rights Committee (HRC) is the monitoring body of the International Covenant on Civil and Political Rights and was established in 1977. The HRC consists of eighteen members, composed of nationals of the States Parties to the Covenant. The members of the Committee are elected and serve in their personal capacity.<sup>121</sup> The Committee holds normally three regular sessions each year.<sup>122</sup>

#### **5.2.1.1 Reporting system**

The States Parties have undertaken to submit reports to the Committee on measures adopted to give effect to the rights recognised in the ICCPR, and on the progress made in the enjoyment of those rights. The task of the

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<sup>118</sup> UN Fact sheet no. 1

<sup>119</sup> <http://www.un.org/womenwatch/daw/csw/critical.htm#gender> 2003-01-07

<sup>120</sup> <http://www.un.org/womenwatch/daw/csw/commproc.html> 2003-01-07

<sup>121</sup> ICCPR, article 28

<sup>122</sup> Rules of procedure of the Human Rights Committee, rule 2



Committee is to study the reports submitted and thereafter transmit its reports and such general comments, as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments, along with copies of the reports.<sup>123</sup> An annual report by the Committee report on its activities is submitted to the General Assembly of the United Nations, through the Economic and Social Council.<sup>124</sup>

The Committee on Human Rights is able to produce general comments on specific articles of the ICCPR. In these comments it has been held that the Covenant shall be interpreted widely. According to general comment no. 28, the States parties need to provide information on national laws and practice with regard to domestic violence and other types of violence in their reports. The information should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated.<sup>125</sup> In the most recent reports and the concluding comments of the HRC, these issues have also been addressed.

#### **5.2.1.2 Complaint procedure**

Under the ICCPR, both another State Party and an individual can submit a communication claiming that a State Party is violating the Covenant. Article 41 states that a State Party may submit a communication claiming that another State Party is not fulfilling its obligations according to the Covenant. Communications may, however, only be received and considered if that State Party has made a declaration recognising, in regard to itself, the competence of the Committee to receive and consider communications.<sup>126</sup> The main purpose of the procedure is to reach an amicable solution. The procedure is however little used and could be delicate.

##### **5.2.1.2.1 Individual complaint procedure - First optional protocol to the International Covenant on Civil and Political Rights**

In order to achieve the purposes of the International Covenant on Civil and Political Rights and the implementation of its provisions, the first optional protocol was set up. It was adopted in 1966 and entered into force in 1976.<sup>127</sup> It has so far been ratified by 102 states.<sup>128</sup> The optional protocol enables the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant. The state must however has become party to the Protocol and recognised the competence of the Committee in

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<sup>123</sup> ICCPR, article 40

<sup>124</sup> ICCPR, article 45

<sup>125</sup> CCPR General Comment 28

<sup>126</sup> ICCPR, article 41

<sup>127</sup> General Assembly resolution 2200A (XXI) of 16 December 1966.

<sup>128</sup> as of 21 August 2002

order for the individual to claim any rights.<sup>129</sup> In order to submit a written communication certain criteria has to be met.<sup>130</sup> The Optional Protocol does not seem to have made a big impact in regard to domestic violence.

## **5.2.2 Committee on the Elimination of Discrimination Against Women**

The Committee on the Elimination of Discrimination Against Women (CEDAW) is the monitoring body of the Convention on the Elimination of All forms of Discrimination against Women and was established in 1982.

CEDAW consists of twenty-three experts of high moral standing and competence in their field. In conformity with the Human Rights Committee, the States Parties of the Convention elect them from among their nationals. The experts are elected for a period of four years and serve in their personal capacity, not as delegates or representative of their countries of origin.<sup>131</sup> The composition of the Committee is different from other treaty bodies since it has almost exclusively been composed of women.<sup>132</sup> Normally, the Committee meets for a period of not more than two weeks annually in order to consider reports submitted.<sup>133</sup> CEDAW is the only human rights treaty body, whose meeting time is limited by its Convention, and the duration is the shortest of all human rights treaty bodies. The Committee observed that the limitation was a serious obstacle to the effective performance of its functions. Therefore it recommended the States parties to amend article 20 of the Convention in respect of the meeting time of the Committee. This allowed annual meeting for such duration as is necessary for the effective performance of its functions under the Convention.<sup>134</sup> Since 1996 sessions have taken place twice a year.

### **5.2.2.1 Reporting system**

In line with the practice of other treaty-based bodies, CEDAW monitors state compliance with the Women's Convention by way of periodic state reporting system. The States parties are required to submit reports for consideration by the Committee on legislative, judicial and other measures, which they have adopted to give effect to the provisions of the Convention, and on the progress made in this respect. A state should submit an initial report, within one year after the entry into force of the Convention in that state, and thereafter at least every four years and further, whenever the

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<sup>129</sup> Optional Protocol, article 1

<sup>130</sup> Optional Protocol

<sup>131</sup> Women's Convention, article 17

<sup>132</sup> UN Fact Sheet 22 "Discrimination against women: The Convention and the Committee" and <http://www.un.org/womenwatch/daw/cedaw/members.PDF> 2002-12-01

<sup>133</sup> Women's Convention, article 20.1

<sup>134</sup> CEDAW General recommendation 22, "Amending article 20 of the Convention: 03/02/95"

Committee so requests.<sup>135</sup> The Committee reports annually, through the Economic and Social Council, to the General Assembly on its activities. The annual report should include suggestions and general recommendations based on the examination of reports and information received from the States Parties.<sup>136</sup> In order to provide practical technical assistance to the States parties, CEDAW has developed general guidelines as to the form, content and date of the reports. The guidelines are to help ensure that CEDAW and the States parties can obtain a complete picture of the implementation of the Convention and the progress made therein. Accordingly, the reports of the States parties should reveal obstacles to the participation of women on an equal basis with men in the political, social, economic and cultural life of their countries. They should also give information on types and frequencies of cases of non-compliance with the principle of equal rights. In their second and subsequent reports, State Parties should have regard to the previous report and include progress, changes and remaining obstacles. In addition to information on the states' conformity with the Convention, information on measures taken to implement the Beijing Platform for Action should be included.<sup>137</sup>

CEDAW has recommended that information about legislation to protect women against the incidence of all kinds of violence in everyday life, other measures adopted to eradicate this violence and the existence of support service, should be included in the periodic reports of the States parties.<sup>138</sup> However, as CEDAW has concluded, not all reports of the States parties adequately reflect the close connection between discrimination against women, gender-based violence and violations of human rights and fundamental freedoms. The full implementation of the Convention requires states to take positive measures to eliminate all forms of violence against women. Therefore information on legal, preventive and protective measures to overcome violence against women and the effectiveness of such measures should be included in the reports.<sup>139</sup> The Committee requests specific statistical information on the position of women in society, not only from the government, but also from non-governmental organisations and independent agencies.<sup>140</sup> This is known as the "shadow-reports".

After the submission of the report by the state, its representatives are given opportunity to orally introduce the report to the Committee. The examination of the reports is not meant to be an adversarial procedure. Efforts are instead made to develop a constructive dialogue between the Committee members and the States parties, with a free exchange of ideas,

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<sup>135</sup> Women's Convention, article 18

<sup>136</sup> Women's Convention, article 21

<sup>137</sup> Guidelines regarding the form and content of Initial Reports of States parties adopted by the CEDAW at its 14<sup>th</sup> session, 3 February 1995

<sup>138</sup> CEDAW General recommendation No. 12

<sup>139</sup> CEDAW, General Recommendation No 19, para. 24

<sup>140</sup> UN Fact sheet No. 22 "Discrimination against Women: the Convention and the Committee"

information and suggestions. The Committee never formally pronounces a state to be in violation of the Convention, but points out the shortcoming of the states through a series of questions and comments. That means that it does not put itself in a position to exert strong pressure on states that are in outright violation of the Convention to change their policies and legislation.<sup>141</sup>

A country rapporteur for each state's report is designated from among the members of the Committee. The rapporteur seeks additional information on the situation of women and the findings are presented at a closed meeting before the State party's presentation. The main issues and trends to be reflected in the concluding comments, relating to the report of the States party, are considered at the meeting. Thereafter, the rapporteur drafts the comment, which only reflect the views expressed at that meeting and not the views of the individual country rapporteurs, in close collaboration with the general rapporteur of the Committee and the support of the secretariat.

Concluding comments follow a standard format with four headings, introduction, positive aspects, factors and difficulties affecting the implementation of the Convention and principal areas of concern and recommendations. The introduction contains comments on whether the report has followed the Committee's guidelines, whether it was sufficient and whether it incorporates or refers to statistical information disaggregated by sex. Other issues addressed are whether there are any reservation to the Convention, if they have been withdraw and whether the State party has objected to reservations of other State parties. There is also a comment on whether the State party has mentioned the implementation of the Beijing Platform for action or not. An objective indication of the strength of the delegation is generally included. Under the rubric "principal areas of concern and recommendations" the particular issues are organised in the order of importance and the Committee provides concrete proposals on the problems identified in the rest of the comments. The comments should also clearly indicate what the Committee wishes the State party to report on in its next report. The concluding comments close with a recommendation relating to dissemination, which request the wide dissemination of the concluding comments in the concerned State party. This is done in order to make the people, the government administrators and politicians aware of the steps that have been taken to ensure de facto equality for women and the further steps required in that regard. It also requests the State party to continue to disseminate widely, and in particular to women's and human rights organisations, the Convention, the Committee's general recommendations and the Beijing Declaration and the Platform for Action. Each concluding comment is internally balanced, and the Committee strives to achieve consistence and balance, particularly in terms of praise and expressions of concern, among the concluding comments elaborated at each

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<sup>141</sup> UN Fact sheet No. 22

session. Accordingly, the Committee considers concluding comments comparatively in an effort to ensure that they are even.<sup>142</sup>

The working methods and the effectiveness of the Committee were discussed at a seminar in Lund in April 2002. The importance in working to streamline the concluding comments, the need for adjustments in the reporting and the problem with the backlog was recognised. To address the backlog of reports from a large number of State Parties, CEDAW decided in 2000, on an exceptional basis, to allow for the State Parties to combine two reports. Other treaty-bodies have already a system for the backlog of the reports and the human rights treaty-bodies have been encouraged to develop a flexible approach, but avoiding incentive the state parties to delay the submission. CEDAW decided therefore as a part of a strategy to encourage the reporting of the State parties to analyse the reasons for non-reporting, remind the non-reporting states and provide consultation, meetings and technical assistance. When it comes to the concluding comments, they should provide clear guidance to the state parties. Their basic format of the concluding comments should be retained but CEDAW should consider objective guidelines for their formulation.<sup>143</sup>

#### **5.2.2.2 Individual complaint procedure - The optional protocol to the Convention on the Elimination of All forms of Discrimination against Women**

During the drafting of the Convention on the Elimination of All forms of Discrimination against Women, there was little attention paid to the possibility of an individual complaint procedure.<sup>144</sup> Since then there has been a great demand for one. The Vienna Conference urged CEDAW to consider the possibility of an optional protocol.<sup>145</sup> The Special Rapporteur recommended the international community to adopt and ratify an optional protocol<sup>146</sup> and the Beijing Conference gave firm endorsement for an optional protocol.<sup>147</sup> In 1999 the Optional Protocol to the Convention was finally adopted by the General Assembly.<sup>148</sup> So far 48 states have become party to the Protocol.<sup>149</sup>

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<sup>142</sup> Procedures for the elaboration of Concluding Comments by the Committee during the 19<sup>th</sup> Session in 1998 (A/53/38/Rev.1) para. 397

<sup>143</sup> Report of the Seminar on Working Methods of the Committee on the Elimination of Discrimination against women (CEDAW/EGM/LUND/WM/2002/Report)

<sup>144</sup> Ursula O'Hare "*Ending the "Ghettosation": The Right of Individual Petition to the Women's Convention*"

<sup>145</sup> Vienna Declaration and Programme of Action at para.40

<sup>146</sup> Report of the Special Rapporteur on Violence Against Women, UN Doc. E/CN.4/1996/53

<sup>147</sup> Beijing Platform for Action at para. 230

<sup>148</sup> General Assembly resolution A/54/4 of 6 October 1999. Open for signature on 10 December 1999 and entry into force 22 December 2000

<sup>149</sup> as of 8 February 2002

By ratifying the Optional Protocol, the State recognises the competence of CEDAW to receive and consider complaints submitted by or on behalf of individuals or groups of individuals, claiming to be victims of a violation of any of the rights set forth in the Convention, by that State Party.<sup>150</sup> In order for individual communications to be admitted for consideration by the Committee, a number of criteria must be met. All available domestic remedies must have been exhausted, the Committee may not have examined the complaint previously or under another procedure of international investigation or settlement and the complaint must be compatible with the provisions of the Convention. The claimants' allegations must also be substantiated, and the facts presented must have occurred after the State party ratified the Protocol.<sup>151</sup>

CEDAW may also request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.<sup>152</sup>

The consideration of the complaint is done at closed meetings where the Committee consider them in light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned. After the examination, the Committee transmits its views and recommendations to the parties concerned. The State Party shall give due consideration and submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee. The State Party has six months to consider the views of the Committee and provide a written response, including remedial steps taken. The Committee may request further information from the State Party, including in subsequent reports.<sup>153</sup> However, it does not formally require State parties to comply with the Committee's final views.

Besides the communication procedure, the Optional Protocol also creates an inquiry procedure enabling the Committee to conduct confidential inquiries into situations of grave or systematic violations of women's rights, if the Committee receives reliable information on such violations by a State Party. With the consent of the State Party, the inquiry may include a visit to its territory.<sup>154</sup> Only the Committee Against Torture has a similar power of inquiry in the face of reported systematic human rights violations.<sup>155</sup> In order to use the communication procedure and the inquiry procedure, the States must be party to the Convention and the Protocol. The Protocol includes an "opt-out clause", allowing States upon ratification or accession

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<sup>150</sup> Optional Protocol, articles 1 and 2

<sup>151</sup> Optional Protocol, article 4 of the

<sup>152</sup> Optional Protocol, article 5

<sup>153</sup> Optional Protocol, article 7

<sup>154</sup> Optional Protocol, article 8

<sup>155</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 20

to declare that they do not accept the inquiry procedure.<sup>156</sup> Otherwise no reservations may be entered to its terms.<sup>157</sup>

To monitor compliance and as a follow-up of the Committee's recommendations the State Party may be invited to include in its report, under article 18 of the Convention, details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.<sup>158</sup>

## **5.3 Regional organisations**

### **5.3.1 Council of Europe**

The Council of Europe is located in Strasbourg, France and consists of 44 Member States. One of the aims of the Council of Europe and included in its fields of activity is the protection of human rights. The main organs of the Council of Europe are the Committee of Ministers, the Parliamentary Assembly and the European Court of Human Rights. Originally, the enforcement machinery of the European Convention on Human Rights consisted of two institutions, the European Commission of Human Rights, which essentially performed a filter function, and the European Court of Human Rights, which passed judgement on cases referred to it by the Commission or by governments. The Committee of Ministers adjudicated in cases, which had not been referred to the Court and where the Commission had found a violation. However, the increasing number of applications, their growing complexity and the widening of the Council of Europe's membership, led to a reform of the Convention's supervisory machinery. A new protocol to the European Convention set up a single full-time Court, in place of the two existing institutions.<sup>159</sup> The aim was to simplify the structure, with a view to shorten the length of proceedings and at the same time strengthening the judicial character of the system.<sup>160</sup>

#### **5.3.1.1 European Court of Human Rights**

The European Court of Human Rights sits on a permanent basis and deals with all the preliminary stages of a case, as well as giving judgement on the merits. The number of judges, who sit in their individual capacity, is equal to the number of contracting states to the Convention.<sup>161</sup> The jurisdiction of the Court is compulsory for all contracting parties and extends to all matters

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<sup>156</sup> Optional Protocol, article 10

<sup>157</sup> Optional protocol, article 17

<sup>158</sup> Optional Protocol, article 9

<sup>159</sup> Protocol No. 11 to the European Convention on Human Rights "restructuring the control machinery established thereby" entered into force on 1 November 1998

<sup>160</sup>

[http://www.coe.int/T/E/Communication\\_and\\_Research/Contacts\\_with\\_the\\_public/About\\_Council\\_of\\_Europe/An\\_overview/](http://www.coe.int/T/E/Communication_and_Research/Contacts_with_the_public/About_Council_of_Europe/An_overview/)

<sup>161</sup> ECHR, articles 20-21

concerning the interpretation and application of the Convention and the protocols thereto.<sup>162</sup> The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be victim of a violation of the rights set forth in the Convention or the protocols thereto.<sup>163</sup> Cases that are clearly unfounded are sifted out of the system at an early stage by a unanimous decision of the Court. If the applications then are judged admissible, the Chamber may attempt to reach a friendly settlement with the parties. If that is impossible, the Chamber will deliver its judgement.<sup>164</sup> All final judgements of the Court are binding on the respondent States concerned. The Court may also give advisory opinions on the request by the Committee of Ministers.<sup>165</sup>

The Committee of Ministers is responsible for supervising the execution of judgements and ensures that any general measures needed, such as changing its legislation, case law, rules or practice to prevent further violations are taken by the states. It makes also sure that just satisfaction, awarded by the Court, is paid to the applicant and that other concrete measures such as reopening procedures, lifting a banning or confiscation order, striking off a police record or granting a residence permit, are taken.<sup>166</sup>

### **5.3.1.2 Committee of Ministers**

The Committee of Ministers is the decision-making body of the Council of Europe and comprises the foreign affairs ministers of all the member states, or their permanent diplomatic representatives. In collaboration with the Parliamentary Assembly, it is the guardian of the Council of Europe's fundamental values, and monitors member states' compliance with their undertakings. The Committee of Ministers ensures that conventions and agreements between member states are implemented and function as supervisory machinery with regard to the European Convention on Human Rights.<sup>167</sup> It adopts recommendation to the member states on various subjects. In April 2002 a recommendation on the protection of women against violence was adopted.<sup>168</sup> The recommendation recognised violence towards women as a result of the imbalance of power between men and women, which is leading to serious discrimination against the female sex, both within society and within the family. Violence against women both violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms. The recommendation set out a numerous measures.

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<sup>162</sup> ECHR, article 32

<sup>163</sup> ECHR, article 34

<sup>164</sup> ECHR, articles 35-39

<sup>165</sup> ECHR, articles 47-49

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[http://www.coe.int/T/E/Communication\\_and\\_Research/Contacts\\_with\\_the\\_public/About\\_Council\\_of\\_Europe/An\\_overview/Human\\_rights/default.asp#](http://www.coe.int/T/E/Communication_and_Research/Contacts_with_the_public/About_Council_of_Europe/An_overview/Human_rights/default.asp#)

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[http://www.coe.int/T/E/Communication\\_and\\_Research/Contacts\\_with\\_the\\_public/About\\_Council\\_of\\_Europe/An\\_overview/The\\_Committee\\_of\\_Ministers/default.asp#](http://www.coe.int/T/E/Communication_and_Research/Contacts_with_the_public/About_Council_of_Europe/An_overview/The_Committee_of_Ministers/default.asp#)

<sup>168</sup> Rec(2002)5 of the Committee of Ministers adopted on the 30 April 2002



The states were recommended amongst other things to review their legislation and policies. That should be done with a view to recognise that states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims. Examples of general measures to be taken are the drawing of action plans and the promotion of research in addition to more specific measures.

### **5.3.1.3 Parliamentary Assembly**

The Parliamentary Assembly of the Council of Europe consists of members of the national parliaments. The Assembly, which is free to choose its own agenda, deals with topics of current or potential importance including problems of contemporary society and aspects of international politics. The texts adopted provide significant guidelines for the Committee of Ministers, national governments, parliaments, political parties and other important areas of society. The Assembly has initiated many European conventions and other legal instruments and it is consulted by the Committee of Ministers before any draft conventions are adopted. Violence against women is one of its major topical issues and can be brought up on the regular conferences, symposia or public parliamentary hearings. The hearings take the form of a dialogue between parliamentarians and specialists. In April 2000, the Parliamentary Assembly adopted a recommendation on violence against women in Europe.<sup>169</sup>

### **5.3.1.4 Promoting equality between women and men**

The Council of Europe seeks to eliminate sex discrimination, to promote a balanced representation of women and men in political and public life and to combat any interference with women's liberty and dignity, such as violence against women. At the third European Ministerial Conference on equality between men and women in 1993, the European Declaration of strategies for the Elimination of Violence Against Women in Society was adopted. The conference also endorsed a plan of action and a possible protocol, to the European Convention on Human Rights, on equality between men and women. In the Final Declaration of the Second Summit of the Council of Europe in 1997, the Heads of State and Government affirmed their determination to combat violence against women and all forms of sexual exploitation of women.<sup>170</sup> As mentioned above, both the Committee of Ministers and the Parliamentary Assembly have adopted recommendations on violence against women.

#### **5.3.1.4.1 The Steering Committee for Equality between Women and Men**

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<sup>169</sup> recommendation 1450 of the Parliamentary Assembly

<sup>170</sup> <http://www.coe.int/T/E/Communication> and  
Research/Contacts\_with\_the\_public/About\_Council\_of\_Europe/An\_overview

The Steering Committee for Equality between Women and Men is the intergovernmental body responsible for defining, stimulating and conducting the Council of Europe's action to promote equality between women and men. It has developed a Plan of Action to combat violence against women. It prepares ministerial conferences, organises seminars and publishes studies on these questions.

### **5.3.2 Organization of American States**

The Organization of American States (OAS) was built on the foundations of the American Declaration of the Rights and Duties of Man adopted in 1948. The main bodies working for the promotion and protection of human rights are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

#### **5.3.2.1 Inter-American Commission on Human Rights**

The Inter-American Commission on Human Rights (IACHR), with its headquarters in Washington D.C., is an autonomous organ of the Organization of American States. The IACHR was created in 1959 and is a permanent body. It meets in ordinary and special sessions several times a year.<sup>171</sup> The Commission is composed of seven members, who are elected in their personal capacity, and represents all of the Member States of the OAS.<sup>172</sup> Its main function is to promote respect for and defence of human rights. Among its functions and powers is the development of awareness of human rights among the peoples of America, the making of recommendations to the member states and the preparation of studies or reports. One of the Inter-American Commission's key functions is however the examination of petitions filed by individuals, who claim to have suffered from a violation by the state of a protected right.<sup>173</sup> Any person or group of persons, or any non-governmental entity legally recognised in one or more member states of the Organization may lodge petitions with the Commission.<sup>174</sup> Once applicable requirements are met, the Commission will process the petition. The Commission reports its findings and, where appropriate, recommend measures to be carried out by the state to remedy the violation. If the country involved has accepted the Inter-American Court's compulsory jurisdiction, the Commission may submit a case to the Court for a final binding decision.<sup>175</sup> In year 2001, the rules of procedure for both the Commission and the Court were amended to give victims and their representatives a more direct voice in proceedings and to make it easier for cases to reach the Court. During the year 2001, the Inter-American

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<sup>171</sup> [www.oas.org](http://www.oas.org)

<sup>172</sup> American Convention on Human Rights, articles 34, 35 and 36

<sup>173</sup> American Convention on Human Rights, article 41

<sup>174</sup> American Convention on Human Rights, article 44

<sup>175</sup> American Convention on Human Rights, articles 48-50

Commission received 718 written complaints about human rights violations. In more than 50 cases, it called for countries to take precautionary measures to prevent irreparable harm to citizens.

The right to individual petition exist not only under the American Convention on Human Rights but the Commission may also receive petitions from any person or group of persons, or non-governmental organisation under the Convention on the Prevention, Punishment and Eradication of Violence Against Women. Such claims should be consider in accordance with the norms and procedures established by the American Convention on Human Rights.<sup>176</sup>

The Commission conducts on-site visits to different countries to analyse and report on the status of human rights. In some cases, it is asked by a member state to investigate and report on a particular human rights situation within its territory. The Commission also regularly examines human rights issues as they relate to certain key topics and it has appointed Special Rapporteurs to analyse and report on the rights of women.<sup>177</sup>

The first case before an international court concerning domestic violence, was brought before the Inter-American Commission on Human Rights. In the Ramjattan case, submitted against the Republic of Trinidad and Tobago, the applicant alleged violations of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. The applicant, Ms Ramjattan, had suffered a terrible history of physical and mental abuse at the hands of her husband. In 1991 she was tried along with two co-defendants for murder of her husband and in 1995 she was convicted and sentenced to death penalty for murder. Reportedly, the police, legal aid lawyers, prison authorities, the courts and the Government of Trinidad and Tobago failed to consider the violent abuse she had been subjected to, and the effect of the abuse of her state of mind and her actions. The State delayed four years and three months in bringing the case to trial and by the time the petition was filed with the Commission, the applicant had been on death row for two years and six months. The Inter-American Commission has declared the case admissible, but no final decision has been adopted.<sup>178</sup>

### **5.3.2.2 The Inter American Court**

The Inter-American Court is located in San José, Costa Rica, where it was installed in 1979. The Court consists of seven judges, who are elected in their individual capacity from the member states.<sup>179</sup> Only the Commission and the States Parties to the Convention have the right submit cases to the

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<sup>176</sup> Convention on the Prevention, Punishment and Eradication of Violence Against Women, article 12

<sup>177</sup> [www.oas.org](http://www.oas.org)

<sup>178</sup> Report N. 92/98 Case 11.837 Trinidad and Tobago v. Indravani Pamela Ramjattan. November 3 1998

<sup>179</sup> American Convention on Human Rights, article 52

Court concerning the interpretation and application of the Convention. In order to do so, the procedures before the Commission must have been previously completed. For a case to be brought before the Court against a State party, that state must have recognised the jurisdiction of the Court. This may be done by a declaration accepting the Court's jurisdiction in all cases or on the basis of reciprocity for a limited time or for a particular case.<sup>180</sup>

The member states of the Organization may consult the Court regarding the interpretation of the Convention or of other treaties on the protection of human rights in the American states. The Court may also, at the request of any member state of the Organisation, issue an opinion on the compatibility of any of its domestic laws with the aforementioned international instruments.<sup>181</sup>

If the Court finds that there has been a violation of a protected right or freedom, it shall rule that the injured party is ensured the enjoyment of his right or freedom. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach is remedied and that fair compensation is paid to the injured party. The Court may adopt provisional measures in cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons.<sup>182</sup> The judgement of the Court is final and not subject to appeal.<sup>183</sup> The States Parties to the Convention have undertaken to comply with the judgement of the Court.<sup>184</sup>

### **5.3.2.3 The Inter-American Commission of Women**

Supporting gender equality is one of the key issues of the Organization of American States. The Inter-American Commission of Women is a specialised organisation within the OAS and was established as early as in 1928. It was the first official intergovernmental agency in the world created expressly to ensure recognition of the civil and political rights of women. Throughout the Americas it has advanced a range of issues important to women and men and has played a crucial role in making the participation and support of women a legitimate and indispensable part of governance and international consensus building in the Americas. One of its key achievements has been the development of the Inter-American Convention to Prevent, Punishment and Eradicate Violence against Women.<sup>185</sup> In 2000 it conducted a follow-up study of the Convention, in which it concluded that despite a greater understanding of violence against women as a human rights violation, the countries of the Americas have fallen far short of eliminating the problem. The report observed that “the drive which once existed to bring

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<sup>180</sup> American Convention on Human Rights, articles 61-62

<sup>181</sup> American Convention on Human Rights, article 64

<sup>182</sup> American Convention on Human Rights, article 63

<sup>183</sup> American Convention on Human Rights, article 67

<sup>184</sup> American Convention on Human Rights, article 68

<sup>185</sup> <http://www.oas.org/default.htm>

about meaningful change appears to have been somewhat eroded” and added that in many countries ratification of the treaty has been seen as a high point in women’s rights, rather than a point of departure. Some positive trends were however noted. Many countries had raised public awareness of the issue of violence against women and many have made progress in criminalizing gender-based violence, in some cases establishing family courts to handle such cases. However, the report identified numerous obstacles to fully implementing programs and measures called for by the treaty, including a lack of political leadership, funding limitations, persistent discriminatory attitudes and a pervasive culture of violence.<sup>186</sup>

The Inter-American Commission of Women monitors states’ compliance with the Convention on the Prevention, Punishment and Eradication of Violence against Women, by way of a reporting system. The states have an obligation to include information on measures adopted to prevent and prohibit violence against women, and to assist women affected by violence, as well as on any difficulties they observe in applying those measures, and the factors that contribute to violence against women in their national reports.<sup>187</sup> The Commission and the States parties may also petition the Court for an advisory opinion, which may be employed to obtain guidance on the extent of states’ obligations under the Convention.<sup>188</sup>

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<sup>186</sup> Violence in the Americas: A Regional Analysis Including a Review on the Convention of Belem do Para (at <http://www.oas.org/>)

<sup>187</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, article 10

<sup>188</sup> <sup>188</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, article 11

## 6 Analysis

In my analysis I will look into the legal instrument presented above and see to what extent they give the individuals rights in concern to domestic violence or what obligations they lay down on the states party to eliminate violence against women. Then, I will take a closer look at the enforcement mechanism, i.e. the complaint procedures and the reporting system, to compare and discuss their benefits and drawbacks.

### 6.1 Comparison of the legal instrument/ Domestic violence as a human rights violation

The legal instruments of particular interest to domestic violence are the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination, the Declaration on the Elimination of Violence Against Women, the documents of the World Conferences on Women and the regional Conventions. The ICCPR, in similarity with the European Convention and the American Convention on Human Rights, does not expressly address violence against women. It is therefore necessary to interpret the Covenant in order to include domestic violence in its provisions.

The principles of non-discrimination and equality, which are deeply rooted in the United Nations system, are expressed in the enumerated legal instruments. It is clear that sex discrimination, in regard to the enjoyment of the human rights and freedoms, is prohibited. This means that the rights and freedoms for women need to be protected and enforced in the same extent as are men's rights and freedoms. If a state pays inadequate attention to prevent domestic violence in relation to comparable forms of violence, women are not given the equal protection as men. Research suggests that investigation, prosecution and sentencing of crimes of domestic violence do occur with much less frequency than of other similar crimes. Wife murderers receive greatly reduced sentences, domestic battery is rarely investigated and rape frequently goes unpunished. These examples stand in direct contrast to the treatment of violent crimes against male victims.<sup>189</sup>

Since the ICCPR does not contain provision covering states responsibility for private acts, the standard of due diligence and the theory of state responsibility have to be implied in order to protect women from private violence and hold the states responsible. There is though limits to the responsibility of the states. Accordingly, one single act of domestic violence

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<sup>189</sup> Kenneth Roth, "Domestic Violence as an international Human Rights Issue", in Human Rights of Women – National and International perspective

is not a human rights violation, unless the state can be said through its systematic inaction to have condoned that violence.<sup>190</sup> Consequently, if collected data provides evidence of systematic, discriminatory, non-prosecution by a state of crimes of violence against women, that state has violated its responsibility under international human rights law.

According to the Human Rights Committee, the non-discrimination and equal protection provisions mandate States parties to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions, both in the public and the private sector, which impair the equal enjoyment of rights.<sup>191</sup> The right to equality before the law and freedom from discrimination, protected by article 26, also requires States to act against discrimination by public and private agencies in all fields.<sup>192</sup> Article 26 is not tied to particular rights secured by the Covenant, but states that all persons are equal before the law and entitled, without any discrimination, to the equal protection of the law. It means that whatever level of resources enforced in criminal law, women have at least right to as thorough rights. Since it simple implies that crimes against women should be enforced in the same ways as crimes against men, it therefore avoids the problem whether the provisions also apply to private actors. However it is not defined exactly what the states are obliged to do, only the equal protection.

The emerging trend towards holding States responsible for actions of certain private actors is reflected both in the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence Against Women. The Women's Convention states that States parties are required to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.<sup>193</sup> It means that although a state is not internationally responsible for a private act of sexual discrimination, it is bound to undertake measures to eliminate or reduce and mitigate the incidence of private discrimination, and to achieve the result that such private discrimination should not recur. The responsibility of the states thus arises when it fails to act appropriately under its municipal law to punish and/or allow compensation for violations of international human rights law.<sup>194</sup>

The Women's Convention obliges the State Parties to eliminate discrimination against women. Since CEDAW has interpreted the

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<sup>190</sup> Kenneth Roth, " *Domestic Violence as an international Human Rights Issue*" in Human Rights of Women – National and International perspective Domestic violence as an international Human Rights issue", page 330-331

<sup>191</sup> HRC General comment no.28 para 4

<sup>192</sup> HRC General comment no.28 para. 31

<sup>193</sup>Convention on the Elimination of All Forms of Discrimination against Women, article 2 (e)

<sup>194</sup> Rebecca J Cook " *State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women* in Human Rights of Women – National and International perspective, page 236-237

Convention to include gender-based violence in the definition of discrimination in its general recommendation 19, which also incorporates the due diligence standard, the states are obliged to eliminate gender-based violence. To recognise violence as a form of discrimination is more far reaching, than the argument that violence affects women disproportionately or that laws against it are not enforced to the same extent as are those that govern violence against men. Gender-based violence, as an obstacle to and engine of inequality is seen as discrimination in itself and requires positive measures, regardless of whether violence against men is similarly redressed.

Since the general recommendation has been authoritatively issued by CEDAW, in its capacity to provide interpretative guidance to the States parties, the risk that a new instrument might suggest that the Women's Convention does not cover violence against women diminishes.

The force of a convention is undermined if it is followed by reservations. The Human Rights Committee has pronounced that "the number of reservations, their content and their scope may undermine the effective implementation of the Covenant and tend to weaken respect for the obligations of States parties. It is important for States parties to know exactly what obligations they, and other States parties, have in fact undertaken."<sup>195</sup> Articles 2 and 16 are considered by CEDAW to be core provisions of the Women's Convention. Although some States parties have withdrawn their reservations to those articles, the Committee has expressed concern of the number and extent of reservations entered to those articles, since article 2 is central to the objects and purpose of the Convention. When a State party ratify the Convention, it agree that discrimination against women in all its forms should be condemned and that the strategies set out in article 2 should be implemented. The Convention does not permit reservations incompatible with the object and purpose of the present Convention and other States parties can challenge the reservations, whether they do so is another problem. To date, few reservations to article 2 have been withdrawn or modified by any State party and reservations to article 16 are rarely withdrawn.<sup>196</sup>

The Declaration on Elimination of Violence Against Women relates specifically to the question of violence against women. It includes the obligation 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.<sup>197</sup> Gender-based violence is also in DEVAW presented as a form of discrimination against women. But unlike the Convention on the Elimination of Discrimination Against Women, it does not establish a clear linkage between violence and the impairment of the rights and it does not

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<sup>195</sup> HRC General comment no. 24

<sup>196</sup> <http://www.un.org/womenwatch/daw/cedaw/reservations.htm>

<sup>197</sup> DEVAW, article 4c



assert violence against women as a human right per se.<sup>198</sup> The extent of state responsibility is not really clear since no clarification of the level of state involvement that would amount to condonation is made. According to DEVAW the states are only obliged to punish acts in accordance with their national legislation. The reference to national legislation could undercut the normative force of its provisions and detract the domestic provisions from the possibility of international scrutiny. The declaration is, in contrast to a treaty, not binding. However, according to Article 55 of the UN-Charter the Member States of the United Nations have an obligation to co-operate with the UN. From that it follows that they are somewhat obliged to observe the resolutions of the General Assembly. The benefit of softlaw, as DEVAW and the conference documents, is the universality in its coverage and the development of international norms. The attention softlaw draw to a specific problem is important. Both DEVAW and the conference document contain recommendations and obligations for the states, which they should follow. Therefore, despite their non-binding force, they do have the power to help shape public perception of the issue of violence against women. DEVAW represents a clear statement of international consensus. The value of legal norms as a catalyst for creating a climate for possible changes should not be underestimated and DEVAW could provide a shaming mechanism and become a valuable lobbying tool for women's groups to challenge state activity and inactivity.<sup>199</sup>

In the UN system, domestic violence has so far not been categorised as an independent right, as in the regional Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. The Convention of Belém do Pará is one of the strongest intergovernmental instruments addressing domestic violence in that it asserts an independent free-standing right of every woman to be free from violence in both public and private spheres.<sup>200</sup>

Arguments have been raised, by some authors, to see domestic violence as a human rights issue in itself. Rhonda Copelan has argued for the inclusion of domestic violence within the framework of instrument prohibiting torture, but also the recognition of gender-based violence as an independent violation of international human rights and the recognition of it as *jus cogens*. She means that torture is universally condemned as one of the most heinous forms of violence and, therefore, provides a framework against which to examine the gravity of domestic violence. To understand domestic violence through the lens of torture could contribute to shift the burden of responsibility from victim to perpetrator. That would be a crucial step, not only in doing justice to battered women, but also in recognising that the roots of this violence lie in the structural inequality and subordination of

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<sup>198</sup> Ursula A O'Hare *Realizing Human Rights for Women*, Human Rights Quarterly 21 (1996), page 379

<sup>199</sup> Ursula A O'Hare *Realizing Human Rights for Women*, Human Rights Quarterly 21 (1996), page 379

<sup>200</sup> Convention of Belém do Pará, article 3

women. The remedies provided in the Torture Convention are however not adequately tailored to the problem of domestic violence. Gender-based violence as an independent violation would encompass directly unequivocally harms inflicted in the private sphere. This eliminates the need to prove official instigation, acquiescence, consent or specific failure to prevent the violence. Since intimate violence is different from other forms of violence it should properly be a matter for law enforcement because it is group-based and has as its purpose the maintenance of the subordination of that group.<sup>201</sup> Roth has, on the other hand, argued that the approach to see any act of intimate violence as human rights violation may undermine the value and universality of human rights law. In his view, the selection of groups for special protection sets bad precedent.<sup>202</sup>

The jurisprudence of State responsibility for private acts is limited and the question whether domestic violence can be seen as torture according to ICCPR article 7, is not developed in the jurisprudence of the Human Rights Committee. It would be interesting to explore that possibility. According to the case law of the European Court, article 3 of the European Convention requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment carried out by private individuals. In order to clarify what rights to be free from domestic violence the individuals have to in regard to the states, it would be instrumental with more jurisprudence and ultimately a treaty, ascertaining women the right to be free from violence also in private.

## 6.2 Enforcement mechanisms

In order to realise the goals of the treaties there must be an effective method to monitor and police states' observance of the obligations they have committed themselves to.

The monitoring and enforcement of the rights is done through different international mechanisms, both at the UN-level and at the regional level. The different procedures for monitoring human rights can be divided into complaint and non-complaint procedures. The complaint procedures expressly permit the submission of complaints by individuals or groups of individuals to a body, for consideration of that body. It can either be a complaint recourse procedure or a complaint information procedure. Examples of complaint recourse procedures are the optional protocol to the ICCPR and the Women's Convention, the European Convention and the Conventions of the OAS. The goal of the procedure is the redress of specific grievance and the organs are legally bound to take a decision on each and

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<sup>201</sup> Rhonda Copelan *Intimate Terror: Understanding Domestic Violence as Torture* in National and International perspective edited by Rebecca J. Cook, 1994

<sup>202</sup> Kenneth Roth, "Domestic Violence as an international Human Rights Issue", in Human Rights of Women – National and International perspective

every case brought before it, if only on admissibility. The complaint information procedure on the other hand does not seek redress of individual grievance, but identifies instead human rights problems affecting whole population. Examples are the 1503 procedure and the communication procedure of the Commission of the Status of Women. The non-complaint procedures exist under the bodies, which do not have an explicit mandate to consider complaints, but receive complaints as a matter of practice. Examples are the reporting procedure under the treaties, the political Commission on Human Rights and the work of the Sub-commission, which may consider the human rights situation in individual countries.<sup>203</sup>

### 6.2.1 Complaint procedures

A state can complain on another state for its violation of human rights under both the ICCPR and under the Women's Convention. That procedure is very little used and can be too delicate. Instead the possibility of an individual complaint procedure is much more interesting. Individual complaint procedures exist both under the ICCPR and the Women's Convention, in accordance with their optional protocols. At the regional level both the European Convention and the Conventions of the Organisation of American States establish a right for individual complaints in the Conventions.

The optional protocols to the ICCPR and the Women's Convention are similar, but the protocol to the Women's Convention allows petitions also from groups of individuals. Few states have so far ratified the protocol, but since it is a relatively new one, more ratification can be expected. The individual complaint procedures of the Council of Europe and the Organisation of American States are different because they have a Court system. In the case of the Council of Europe, there exists also a form of enforcement of the judgement.

The benefit of an individual complaint procedure is the possibility of a clear result and a legally binding decision, either formally or in practice. While the decisions adopted by the European and Inter-American Courts are legally binding, the views adopted by the UN treaty bodies are not formally binding as a matter of international law. The Human Rights Committee has although expressed that it may normally be expected that states ratifying the protocol will show themselves inclined to follow the opinion of the Committee, when it goes against them.<sup>204</sup> However, there are no effective enforcement mechanisms of the views adopted by the treaty-monitoring bodies.

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<sup>203</sup> Andrew Byrnes "Toward more effective enforcement of women's human rights through the use of international human rights law and procedures" in Human Rights of Women

<sup>204</sup> Andrew Byrnes "Toward more effective enforcement of women's human rights through the use of international human rights law and procedures" in Human Rights of Women

To protect the affected individual a complaint procedure can still only do little since it starts too late, takes too much time and lack effective enforcement. A problem is the freedom of choice for the states to approve the complaint procedure, given that all individual complaints are optional. The rights of the individuals are thus depending on the good will of their state, since the concerned State must have ratified the procedure in order for the violated to use it. Another problem is the slowness of the procedure. Firstly, the domestic remedies must have been exhausted and then the complaint procedure takes considerable time. You can therefore say that the individuals win in a way for others more than for themselves. The possibility for group action is therefore very useful since the individual perhaps sees no point in taking her case to an international consideration.

Utilisation of the individual procedure is foremost an important way of developing jurisprudence on the interpretation of the human rights standards. The ability to give authoritative interpretations to the Women's Convention through the medium of the individual complaints procedure is therefore a way to enhance publicity and awareness of the work of women's human rights in general and hopefully on domestic violence.

O'Hare has argued for why the right of petition to the Women's Convention is needed, despite evidence of under-utilisation of the right to individual petition of treaty-based human rights bodies generally and the mixed record of state compliance therewith. She means that, since there has been a widespread failure at the national level to guarantee women's human rights, the possibility of international scrutiny of states' compliance with their obligations is of particular importance. The power to grant interim measures may be particularly useful in the context of cases concerning potentially life-threatening violence against women, which is a significant development in enhancing the effectiveness of human rights enforcement procedures. Also the inquiry procedure, with the possibility to visit the territory of the State party concerned with that state's consent, has the potential to make significant contribution towards realising women's human rights. The Commission on the Status of Women not has made substantial use of its communications procedure. She means that supplementing its procedure with a similar right of inquiry by the CEDAW may serve to stimulate greater use of the communication procedure generally. Moreover, the inquiry procedure could enhance collaboration between the Committee and the NGO's, enabling non-governmental organisations to be informed of the work of the Committee and by highlighting systematic human rights violations. It also permits the Committee to address a wider range of issues, including single-issues, than is possible under the individual complaint procedure. This is particularly useful in the context of addressing the structural issues, which maintain women's inequality.<sup>205</sup>

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<sup>205</sup> Ursula O'Hare *"Ending the 'Ghettosation': The Right of Individual Petition to the Women's Convention"*

Neither the 1503- procedure nor the communication procedure of Commission on the Status of Women, which is specifically designed to respond to violations of women's human rights, seem to have been used to a large extent to address the issues of sex discrimination or violations of human rights in general.<sup>206</sup> The communication procedure of the CSW is relatively little known and has not made a major contribution to the policy-making work of the commission. It does neither appear to have provided an avenue for redress of specific grievances. According to the procedure, examination of the human rights problem identified takes place in private and ends with a report to the Sub-commission. It does not have enforcement power or permission to enter the territory to hear victims. This procedure could be used in a larger extent.

The Commission of Human Rights considers special human rights grievances of individual countries in public sessions. The benefit to be gained from using such a political forum is the opportunity to place the spotlight on abuses in an individual country and publicity gained from that. In fairly egregious cases of human rights violations, it may be that such a body would be prepared to place additional pressure on a state by adopting a resolution. The resolution could range from expressions of concern to expressions of condemnation and even result in the establishment of a special mechanism to investigate the condition in a country.<sup>207</sup>

The international system is supplementary to that of the national authorities, who are primary responsible for the protection of human right and to provide remedies for violations of human rights. If they fail to protect the human rights it is for the international system that take over.<sup>208</sup> As we have seen there are however limitations of the international system since recourse to international procedures are very limited and rarely have a direct impact. In the resort to an international enforcement mechanism, the regional mechanism may provide a more effective route for action. The decision is made on at a level closer to the individual. In addition the regional organisation consist of less member states, with more similar values and legal systems than the UN, and therefore it could be easier to reach a conclusion.

### **6.2.2 Reporting systems**

Both the ICCPR and the Women's Convention prescribe monitoring through submission of reports by the States party to their treaty monitoring bodies.

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<sup>206</sup> Andrew Byrnes "Toward more effective enforcement of women's human rights through the use of international human rights law and procedures" in Human Rights of Women, page 205

<sup>207</sup> Andrew Byrnes "Toward more effective enforcement of women's human rights through the use of international human rights law and procedures", page 209

<sup>208</sup> Andrew Byrnes "Toward more effective enforcement of women's human rights through the use of international human rights law and procedures", page 209

The Human Rights Committee has only recently started to address the issue of violence against women in its consideration of reports.

The aim of periodic reporting is to encourage a dialogue between the monitoring body and the state. The consideration of reports provides a forum for discussion with an independent body, whose brief is to provide constructive assistance in order for the States to meet their treaty obligations. At the same time the states' strengths and weakness are submitted to public scrutiny. The exchange of information provides a review over national legislation, administrative rules and procedures and practices and allows the treaty body to monitor, assess and evaluate the strategies put in place to advance the Convention's ideals. The Committee is in that way able to identify the most appropriate means by which the international community might assist the states.<sup>209</sup> The aim and ideals of the reporting system is commendable. However, in order for the reporting system to be effective and useful, it depends upon the co-operation of the states party and their submission of full and timely reports, the access by the treaty body to independent sources of information, maximum publicity for the proceedings, ability to make recommendations and prompt consideration of reports.<sup>210</sup>

In the case of CEDAW, several states have not submitted their reports in time or even at all.<sup>211</sup> When and if the reports are submitted it can take up to three-four years for them to be considered by CEDAW. The non-reporting is a problem, especially since the non-reporting states probably are the same state that needs monitoring. It is therefore important to encourage reporting to the treaty bodies and to underline the seriousness of reporting.

The backlog of the consideration of reports is due to the fact that CEDAW has been curtailed by procedural and financial restraints, since it started its work. Compared with other treaty-based bodies CEDAW remain under-resourced, whilst its workload has increased dramatically. Besides the backlog of work the committee is in a way hindered by its geographic isolation, which has contributed to the sense of "ghettoisation". The Committee does not enjoy the benefits of close co-operation with the Geneva-based bodies, to which the mainstream non-governmental organisations direct their attention.<sup>212</sup> The meeting time of CEDAW has though been changed, but it would need more financial resources.

The consideration of country reports by the treaty bodies can and should be used to exert pressure on a national government to follow its obligations. The publicity given to the sessions at the international and national level and the follow up at the national level is important. For a more effective use of

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<sup>209</sup> Assessing the status of women

<sup>210</sup> Ursula A. O'Hare "*Realizing Human Rights for Women*" in *Human Rights Quarterly* 21 (1996)

<sup>211</sup> <http://www.un.org/womenwatch/daw/cedaw/submission.htm>

<sup>212</sup> Ursula A. O'Hare "*Ending the "Ghettoisation": The Right of Individual Petition to the Women's Convention.*

reporting procedures, it is vital to disseminate the reports and concluding comments to the public and the national NGO's and to spread knowledge about the process and its potentialities. The reporting is an occasion for national groups to present information about violations of women's rights and they must be made aware of the government's submission of reports and the time when they are to be examined by the relevant treaty body. The contact with the local NGO's and fact-finding, beside information from the government, is important for getting a complete picture of the situation in the country. The possibility of so-called shadow reports is a resource for the treaty-body, if the Governments are reluctant to tell the whole truth or hide certain facts.

The constructive dialogue and an internally balanced concluding comment is good for the encouragement of reporting, but at the same time it is sometimes necessary to add more and pressure. That compromise is difficult to make.

Substantive reservations to Conventions are a problem and pose a significant challenge to the integrity of the Convention and to the realisation of its goals. However, even though the states have made reservations to the Women's Convention, they are still brought under the monitoring system and have to explain the necessity of the reservations. The HRC has expressed in its general comment no.24 that it is up to the Committee to determine whether reservations are compatible with the Convention. Maybe that is something CEDAW could copy instead of leaving it to the other states.

### **6.2.3 The Special Rapporteur on Violence Against Women**

The Special Rapporteur on Violence Against Women is somewhat a hybrid procedure and not really an enforcement mechanism. The advantages of such a special mechanism are many. Her role is to stop abuse without necessarily casting blame. It means that she can combine a humanitarian role of seeking redress for individual victims, with an analytic exploration of the nature of the phenomenon and an examination of country situations through on-site visits. The appointment of a Special Rapporteur can be seen as a signal of the need to deal deeper with a particular human rights problem. For that reason, the appointment of a Special Rapporteur on Violence Against Women added visibility to the question of violence against women.<sup>213</sup>

The concentration by a Special Rapporteur on one special problem is a great benefit and the expertise of the Special Rapporteur could contribute to a deeper investigation and research into one particular issue. In order for the procedure to be effective it is though important that the mandate is not to wide for one person. The Special Rapporteur on Violence Against Women

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<sup>213</sup>Andrew Byrnes "Toward more effective enforcement of women's human rights through the use of international human rights law and procedures" in Human Rights of Women

has pointed out that in order to carry out her duties it is important that she has sufficient resources and that the Commission on Human Rights expand the mandates of those thematic mechanisms that currently lack specificity regarding violence against.<sup>214</sup>

The position of the Special Rapporteur is only an ad hoc mechanism, with no avenue for redress. It would be useful if it was made permanent.

The Commission on Human Rights has now invited the Special Rapporteur on torture to examine questions concerning torture directed disproportionately or primarily against women and conditions conducive to such torture. He should appropriate recommendations concerning prevention of gender-specific forms of torture.<sup>215</sup> In his report to the fifty-first session of the Commission on Human Rights, he addressed gender-specific forms of torture in endorsing CEDAW's recommendation No 19 regarding gender-sensitive training of judicial and law enforcement officers and other public officers. In addition, the Special Rapporteur recommended that female security personnel be present during the interrogation of women detainees, as the interrogation and detention of female detainees by exclusively male personnel constitute conditions that may be conducive to rape and sexual abuse of women prisoners or the threat or fear thereof.<sup>216</sup> There was though nothing mentioned concerning domestic violence as torture.

### **6.3 Mainstreaming and Co-operation**

The need for mainstreaming of women's rights, as has been emphasised especially at the Vienna Conference, signify that women's issues should be addressed not only in the so-called women's bodies but also in the general, mainstream human rights bodies. If the women's rights and the issue of violence against women are addressed throughout the UN, the importance and seriousness will be underlined. Other treaty bodies than CEDAW, can offer opportunities for the gender perspective to be advanced. The mainstream human rights bodies have however failed to respond to issues of concern to women in the United Nations. The issue of violence against women should be addressed by the mainstream human rights bodies as the Commission on Human Rights, which is the key political human rights body within the UN-system, and the Human Rights Committee, which has considerable status in defining discourse within the UN structure.

The problems for women's bodies are that their resources are more limited and their enforcement procedures weaker than the mainstream human rights

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<sup>214</sup> Report of the Special Rapporteur on Violence Against Women, UN Doc. E/CN.4/1996/53

<sup>215</sup> Resolution 1994/37 of the Commission on Human Rights, para 5

<sup>216</sup> Report by the Special Rapporteur on Torture, E/CN.4/1995/34, paras.20 and 24



bodies.<sup>217</sup> With the adoption of the optional protocol to the Women's Convention the enforcement has though been strengthened.

The composition of the human rights bodies is overwhelmingly male, with the exception of CEDAW. Increasing the female representation of the mainstream bodies could contribute to a more receptive hearing for women's rights also in the mainstream bodies.

The UN must allocate resources to human rights bodies and mechanisms to specifically address violations of the human rights of women. At the same time should the weight and importance of the women's bodies, specially designed to address women's rights, be improved. By bringing the CEDAW broadly into line with, or significantly in advance of, other treaty-based bodies, the international community can underscore the seriousness with which it now responds to women's issues and sends out a clear signal that the commitment at Vienna and Beijing to improve the effectiveness of human rights enforcement mechanisms has substance.

The United Nations is a huge organisation and the danger of mainstreaming could be that different bodies take actions unaware of what other ones are doing. Co-operation is therefore vital. The strengthening of co-operation and co-ordination between the Commission on Human Rights, the Commission on the Status of Women, the Committee on the Elimination of Discrimination against Women and other treaty bodies have been encouraged by the Commission of Human Rights.<sup>218</sup> For example, CEDAW could be helped by information the Special Rapporteur has gathered about different countries. Another way of receiving information is to co-operate with the regional organisations and non-governmental organisations both at the international level and the national level. The participation of national organisation could be very useful and would bring the decisions closer to the individuals.

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<sup>217</sup> Rebecca Cook "State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women" in Human Rights of Women – National and International perspective

<sup>218</sup> Resolution 1994/45 of the Commission on Human Rights

## 7 Conclusion

The international legal framework, with regard to domestic violence needs further clarification. Developing jurisprudence in regard to state responsibility and the obligation of states could do this. Moreover, the direct right of women to be free from violence should be strengthened. As has been pointed out by O'Hare, the failure to assert a separate right to be free from all forms of violence as a violation of a woman's right to life, liberty, and security of the person, or of her right to be free from torture, is unfortunate. Intimate violence has not yet been defined as a violation of "mainstream" human rights standards. Such a connection would be instrumental in encouraging the mainstream human rights bodies to reconsider the limits of their mandates.<sup>219</sup>

Within the United Nations and the regional organisation the Governments make many recommendable commitments and numerous recommendations are adopted. Nevertheless, these are often very idealistic and vague and it is doubtful to what extent they do any real use. Consequently, an effective enforcement of the commitments and obligations is the most important thing in order for the states to take them seriously.

First of all is it crucial to change the view on domestic violence and to understand gender-based violence not as the sporadic acts of few men, but symptomatic of the structural inequality in society. The subordination of women is consequently both a cause and a consequence of domestic violence. Therefore the role of women in society needs to be strengthened in order to combat and eliminate violence, even though it is not possible to completely eradicate all violence. The attitude of the governments needs though to be one of a full commitment to combat violence against women, not only to the same extent as normal crimes, but more extensive. Still domestic violence is not seen as a crime or enforced in various countries. It is therefore necessary to see domestic violence as an independent human rights issue, which the state is responsible for.

Co-operation within and between the international organisations and with national NGO's will be necessary to reach this goal.

And as the Special Rapporteur has said, the "United Nations has opened its mind to their (women's) problems, it is only now beginning the process of opening its heart" .

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<sup>219</sup> Ursula A O'Hare *Realizing Human Rights for Women*, Human Rights Quarterly 21 (1996)

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