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## ACADEMY IN-BRIEF No. 4

# The Situation of Women's Rights 20 Years after the Vienna World Conference on Human Rights

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# Introduction

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The adoption of the Vienna Declaration and Programme of Action (VDPA) by the 171 participating states at the United Nations World Conference on Human Rights, held in Vienna in June 1993, is widely regarded as a watershed moment in the women's rights movement. For the first time it was universally accepted that women's rights are human rights, paving the way for the growing integration of women's rights and the gender perspective into human rights norms and practice.

This Academy In-Brief considers how far women's human rights have come 20 years since the VDPA by looking at contemporary violations of women's human rights around the world, such as violations of the right to life, to freedom from torture or inhumane treatment, and to freedom from discrimination or slavery. Three challenges to the realization of women's fundamental human rights are highlighted: sexual violence in armed conflict; trafficking of women and girls; and intimate partner violence. An overview of the forms and consequences of these violations is provided along with the applicable international legal framework. Recommendations are made as to how progress can be made in tackling each of the three challenges.





# A brief history of the 1993 Vienna Conference

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Prior to the World Conference in Vienna, women's human rights were largely unrecognized and absent from the international human rights agenda. The prevailing approach at the time was to divide the public sphere from the private, and for the human rights agenda to concern itself only with acts taking place in the public sphere which, in the main, were those affecting men. This resulted in many women's issues, such as intimate partner violence, being dismissed as a private issue and thus not involving human rights violations.

In the decade leading to the 1993 World Conference, awareness of the human rights of women increased and a growing number of activists began to question why women's rights had been side-lined. Declaring that 'women's rights **are** human rights', activists sought to highlight that widespread gender-based discrimination and abuse of women 'is a devastating reality as urgently in need of redress as other human rights violations'.<sup>1</sup> A coordinated effort began in the early 1990s to remove women's rights from the side-lines. The 1993 World Conference became the focus of the Global Campaign for Women's Human Rights as an opportunity to bring women's rights to the forefront of the human rights agenda. The Global Campaign for Women's Human Rights held regional and international meetings, lobbied at regional and international levels, and produced a petition, signed by more than half a million people around the world, calling on the World Conference to 'comprehensively address women's rights at every level of its proceedings' and demanding that gender-based violence against women be recognized as a human rights violation that requires immediate action.<sup>2</sup> The petition backed by national campaigns sought to influence the regional preparatory meetings for the World Conference.

While women's rights campaigners were galvanizing support and developing international coalitions (among NGOs, governments and UN agencies such as the Development Fund for Women (UNIFEM)), doubts remained whether the World Conference would in fact take place as governments could not decide which

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<sup>1</sup> Charlotte Bunch and Niamh Reilly, *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women's Human Rights*, Centre for Women's Global Leadership and United Nations Development Fund for Women, New York, 1994, p. 2.

<sup>2</sup> *Ibid.*, p. 5.

human rights issues (economic, social, and cultural rights versus civil and political rights) were universally accepted and should therefore be on the Conference's agenda. This served as an opportunity for women's rights campaigners—who had not distinguished between these two sets of rights—to influence the final Geneva Preparatory Committee meeting and ultimately the final agenda of the Conference itself.<sup>3</sup>

Once in Vienna, the Global Campaign continued to lobby and hold workshops and panel events. A Global Tribunal on Violations of Women's Human Rights was held, in which women testified about their experiences of abuse, including domestic violence, sexual violence in armed conflict, political discrimination, and described the impact of socio-economic discrimination on health, housing, and poverty. The Tribunal highlighted the reality of women's lives around the world and facilitated discussion of how to incorporate women's perspectives into human rights. The Tribunal and the wider campaign also enabled women to show themselves as activists and part of a powerful human rights constituency for change, with ideas and knowledge about how to strengthen the human rights movement.<sup>4</sup>

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3 *Ibid.*, pp. 6–7.

4 Charlotte Bunch, *Legacy of Vienna: Feminism and Human Rights, International Expert Conference on Vienna + 20*, Vienna, 27 June 2013, p. 2.

# The VDPA

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The impact of women's rights campaigners on the 1993 World Conference is evident from the preamble of the VDPA which states the Conference's deep concern about 'various forms of discrimination and violence, to which women continue to be exposed all over the world'. The VDPA affirmed that 'the human rights of women and of the girl-child are inalienable, integral and indivisible part of universal human rights' and that the 'full and equal participation of women in political, civil, economic, social and cultural life' and 'the eradication of all forms of discrimination on the grounds of sex' should be a priority for the international community.<sup>5</sup>

Violence against women is given particular attention in the VDPA: it is reiterated that 'gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated'.<sup>6</sup>

The rights of women and girls were highlighted in a number of thematic sections. For example, regarding armed conflict, the VDPA expresses deep concern regarding 'violations of human rights during armed conflict, affecting the civilian population, especially women...'.<sup>7</sup> With regard to the human rights of girls, states are urged 'to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl-child'.<sup>8</sup>

A section of the VDPA is dedicated to addressing women's human rights, entitled 'The equal status and human rights of women'.<sup>9</sup> The critical points of this section include the importance of 'working towards the elimination of violence against women in public and private life' and 'the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and harmful effects of certain traditional

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<sup>5</sup> VDPA, Part I, §18.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*, §29.

<sup>8</sup> VDPA, Part II, §48.

<sup>9</sup> *Ibid.*, §§36–44.

or customary practices, cultural prejudices and religious extremism'.<sup>10</sup> Within this part of the VDPA, and also regarding armed conflict, it is confirmed that 'murder, systematic rape, sexual slavery, and forced pregnancy' are violations of international human rights and humanitarian law and require a particularly effective response.<sup>11</sup> The importance of 'enjoyment by women of the highest standard of physical and mental health' is highlighted, with the VDPA affirming 'women's right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels'.<sup>12</sup>

More broadly, but of particular importance to women's rights, the VDPA reaffirmed the universality of human rights, and that it is the duty of states 'regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms'.<sup>13</sup> It reiterated that all human rights are indivisible, interdependent and interrelated, meaning that no set of rights is more important than the other and the enjoyment of one depends on the realization of another.<sup>14</sup>

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<sup>10</sup> *Ibid.*, §38.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*, §41.

<sup>13</sup> VDPA, Part I, §§1 and 5.

<sup>14</sup> *Ibid.*, §5.

# Outcome of the VDPA

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Following the 1993 World Conference the mantra 'women's rights are human rights' has been widely embraced and gone on to influence other world conferences.<sup>15</sup> As well as bringing women's rights in from the sidelines and placing them squarely on the human rights agenda, the VDPA had a number of concrete outcomes. As the VDPA explicitly called for,<sup>16</sup> the UN General Assembly adopted the UN Declaration on the Elimination of Violence against Women, in December 1993.<sup>17</sup> The VDPA led to the establishment by the Commission on Human Rights of a new Special Procedure mandate in March 1994, the Special Rapporteur on violence against women, including its causes and consequence.<sup>18</sup> The VDPA also called on the Committee on the Elimination of Discrimination against Women (the CEDAW Committee) to examine the possibility of introducing an individual complaints procedure,<sup>19</sup> which eventually came into being in December 2000 through the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>20</sup>

The Declaration on the Elimination of Violence against Women provides for the first time a definition of violence against women, stating this to be '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 deprivations of liberty, whether occurring in public or private life'.<sup>21</sup> The Declaration contains a non-exhaustive list of violence against women, namely: physical or psychological violence in the family: sexual abuse; marital rape; dowry-related violence; female genital mutilation; trafficking in women; and forced prostitution.<sup>22</sup> States are urged to eliminate all such violence and not to 'invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination'.<sup>23</sup>

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**15** Not least the Beijing Fourth World Conference on Women in 1995. Beijing Declaration and the Platform for Action, UN doc. A/CONF.177/20, 17 October 1995.

**16** VDPA, Part II, §38.

**17** UN Declaration on the Elimination of Violence against Women, adopted under UN General Assembly Resolution 48/104 (1993).

**18** Commission on Human Rights Resolution 1994/45, 4 March 1994.

**19** VDPA, Part II, §40.

**20** A total of 104 states were party to the Optional Protocol as of writing.

**21** UN Declaration on the Elimination of Violence against Women, Art. 1.

**22** *Ibid.*, Art. 2.

**23** *Ibid.*, Art. 4.



# An overview of women's human rights in 2014 and gaps in implementation

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Twenty years after the VDPA, however, the universality of human rights has still to be realized in practice. Women and girls around the world continue to face multiple forms of discrimination and oppression every day. At their worst, the consequences of this discrimination can be fatal. Millions of women are missing as a result of a phenomenon that some have labelled 'gendercide' and others a 'war against girls'. Gender-related killing of women, whether direct or indirect, is undoubtedly the most widespread and extreme form of discrimination faced by any group today. Females are discriminated against before they are even born. Female infanticide, based on deeply rooted patriarchal, cultural and religious beliefs, occurs by female fetuses being aborted, baby girls being drowned after birth or abandoned, and girl-children neglected. As a consequence, the girl to boy ratio in a number of states is dramatically unbalanced. Boys naturally outnumber girls by approximately 107 to 100 globally, but in China, for example, there are 118 boys born for every 100 girls.<sup>24</sup> An estimated 500,000 female fetuses are aborted annually in India alone.<sup>25</sup>

A global snapshot of women's enjoyment of their basic human rights in 2014 appears bleak. The female body and female sexuality still remain a battleground for control, and culture and religion are still allowed in practice to trump women's fundamental human rights to life, to freedom from torture and ill-treatment or punishment, and to health. Women's human rights are denied through religious and cultural practices in a number of ways and on an alarming scale. An estimated 140 million women and girls worldwide are living with the consequences of female genital mutilation (FGM) and approximately 3.3 million are at risk of FGM each year;<sup>26</sup> thousands of women are killed or injured every year in dowry deaths,

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<sup>24</sup> Gretchen Linington, 'Will the end of China's one-child policy shift its boy-girl ratio?', Pew Research Center, 15 November 2013.

<sup>25</sup> Vinod Kumar Paul et al., 'Reproductive health, and child health and nutrition in India: meeting the challenge', *The Lancet*, Vol. 377, Issue 9762 (2011), 332–349.

<sup>26</sup> WHO, *Understanding and addressing violence against women: Female genital mutilation*, Geneva, 2012.

reportedly one every hour in India;<sup>27</sup> every day 800 women die from pregnancy or childbirth—related complications, many of these deaths are preventable and are symptomatic of women being denied reproductive rights including access to termination services.<sup>28</sup> In addition, thousands of women each year are subjected to so-called ‘honour killings’ with the recent stoning to death of Farzana Parveen by her family in Pakistan a tragic example;<sup>29</sup> while lesbians are subjected to ‘corrective rape’,<sup>30</sup> women are forced into marriage, and girls into early marriage.

Women are still denied access to political life and in some states women are still denied the right to vote.<sup>31</sup> Women who exercise their right to peaceful protest have been targeted with sexual violence, for example female demonstrators in Tahrir Square in Egypt who were subject to ‘virginity tests’ as a reprisal for their political engagement.<sup>32</sup> Women are denied access to justice and equal protection of the law, a matter of such concern that it is the subject of focused deliberations by the Committee on the Elimination of Discrimination against Women in its work towards establishing a General Recommendation on the subject. In some national courts, women’s testimony is taken to be worth less than a man’s.<sup>33</sup> Women are denied freedom of movement without a male’s permission in many countries, including in the case of women judges in some countries in the Middle East and North Africa.<sup>34</sup>

Women continue to be denied access to education in many countries and economically women still face systematic discrimination.<sup>35</sup> In a majority of states, women do not receive equal pay, and in some states women are excluded from the workplace.<sup>36</sup> The disproportionate impact of poverty on women has not been addressed, while action to curb the socio-economic aspects of gender-based discrimination is badly needed. Today there is an ever-growing gap between women whose social and economic status has improved and those for whom it has not.

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27 ‘Woman killed over dowry “every hour” in India’, *Daily Telegraph*, 2 September 2013.

28 WHO, *Maternal mortality: Fact sheet No. 348*, May 2014. One of the eight Millennium Development Goals (MDGs) is to reduce maternal mortality by three-quarters between 1990 and 2015. Thus far, maternal deaths worldwide have dropped by 45%.

29 *BBC News*, Pakistan woman stoned by family outside Lahore court, 27 May 2014.

30 A prevalent practice in South Africa: ‘Crisis in South Africa: The shocking practice of ‘corrective rape’ – aimed at ‘curing’ lesbians’, *The Independent*, 4 January 2014.

31 Human Rights Watch, *World Report 2013: Saudi Arabia*, 2013.

32 FIDH, *Women and the Arab Spring: Taking their place*, 8 March 2012, p. 17.

33 *Amnesty International*, *Yemen’s Dark Side: Discrimination and Violence Against Women and Girls*, November 2009.

34 Human Rights Watch, *World Report 2013: Saudi Arabia*, 2013; Freedom House, *Women’s Rights in the Middle East and North Africa 2010*, 2010.

35 Freedom House, *Women’s Rights in the Middle East and North Africa 2010*, 2010.

36 World Economic Forum, *Global Gender Gap Report 2013*, Geneva 2013.



A further evident failure since the VDPA concerns the document's urging to states to withdraw reservations that are contrary to the object and purpose of CEDAW, or which are otherwise incompatible with treaty law.<sup>37</sup> States have failed in this regard, and CEDAW remains the human rights treaty with the highest number of reservations, many of which contravene the object and purpose of the Convention.

One cannot adequately cover all of the numerous forms of gender-based discrimination that women experience today, 20 years on from the VDPA. Three areas have therefore been selected to highlight gender-based discrimination: in the conflict setting, sexual violence in armed conflict; in organized crime, trafficking in women and girls; and in the family setting, intimate partner violence.

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<sup>37</sup> VDPA, Part II, §39.



# Sexual violence in armed conflict and its aftermath

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Entrenched discriminatory attitudes and practices, combined with ineffective law enforcement and instability as well as generalized cultures of impunity, have allowed large-scale and often systematic sexual violence in armed conflict to perpetuate, which disproportionately affects women.<sup>38</sup> Impunity for sexual violence during armed conflict is still the norm, sending the message that it is somehow socially acceptable, and thereby perpetuating a culture of tolerance, particularly where peace agreements and/or ceasefires fail to address the issue. It is therefore unsurprising that levels of sexual violence against women and girls have even increased in the wake of some conflicts.<sup>39</sup>

Sexual violence in armed conflict and in its aftermath goes largely unreported. Accurate data is therefore not available concerning the full scope of its prevalence and character.<sup>40</sup> However, it is known that sexual violence is often used as a weapon in conflict and that this can be highly effective: it devastates the victim both physically and psychologically and it shatters communities. Sexual violence is used to intimidate, punish, demoralize, and control victims and their communities. It is also used in relation to other criminal activities, such as to control lucrative

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**38** Although this section only concerns itself with women's experiences of sexual violence in armed conflict, other aspects of armed conflict also affect women disproportionately or in a different way to men. For example women are more likely to become refugees or displaced persons during conflict (and thus experience all of the disadvantages this brings including lack of access to health care, education and work). Also women's responsibility for agriculture and water collection in many societies renders them particularly vulnerable to injury from certain types of weapons, such as landmines. Further, 'women's overall position of disadvantage within the community means that the general hardships accompanying armed conflict frequently fall more heavily upon women than upon men'. UN Division for the Advancement of Women, *'Women 2000: Sexual Violence and Armed Conflict: UN Responses*, April 1998, p. 1.

**39** For example, cases of rape and forced prostitution in Liberia and Sierra Leone increased significantly following conflict in these states. See, e.g., B. Ahonsi, 'Gender and HIV/AIDS in Post-Conflict West Africa: Issues and Responses', *Nordiska Afrikainstitutet*, Uppsala, 2010; K. Tayler-Smith *et al.*, 'Sexual Violence in Post-conflict Liberia: survivors and their care', *Tropical Medicine & International Health*, Vol. 17 (2012), pp. 1356–60.

**40** Under-reporting may be due to a single factor or a combination of factors, including insecurity, social stigma, cultural taboos, fear of reprisals, economic barriers (for example, in Côte d'Ivoire, an obligatory medical certificate is needed to bring a rape case to court, which costs US\$100), apathy, cultural practices (for example, where the burden of proof falls on the victim) and the perception that the exercise would be pointless due to lack of infrastructure and effective law enforcement.

trafficking routes or areas of natural resources;<sup>41</sup> against protesters in an attempt to silence them;<sup>42</sup> and in the context of elections.<sup>43</sup>

The inequality between men and women in most societies whereby women are viewed and treated as subordinate and inferior to men means that, in all contexts, female victims of sexual violence outnumber male victims. In armed conflict, however, the plight of women and girls is exacerbated, since conflict creates 'a sort of "free for all" in which pre-existing ideas about women as inferior, and other discriminatory and misogynistic ideas, may be given free expression by frequently all-male groups of soldiers and combatants'.<sup>44</sup> Rape, genital mutilation, deliberate infection with HIV/AIDS, sexual slavery, forced marriage, forced sterilization, forced prostitution and forced impregnation are just some of the forms of sexual violence that girls and women are subjected to during armed conflict and its aftermath. Sexual violence may not involve physical force or necessarily be confined to a party to the conflict, for example if a humanitarian aid worker offers food in exchange for a sexual act.<sup>45</sup>

In the conflict setting, women are all too often perceived to be merely an extension of the opposition's male fighters, an object for pleasure—'a warrior's reward', the 'spoils of war'—or a vessel for procreation. Women often lack the ability to flee conflict affected areas due to lack of economic means, pregnancy, caring for young children and/or elderly relatives, or sometimes because they are encumbered by cultural or religious constraints that limit their ability to move freely without the presence or even permission of a male. Those who do manage to flee the immediate violence find themselves vulnerable during flight and once displaced as internally displaced persons or refugees. During flight, women and

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41 Report of the UN Secretary-General, *Sexual Violence in Armed Conflict 2014*, UN doc. S/2014/181, 12 March 2014, §97.

42 See, for example, African Commission on Human and Peoples' Rights, *Egyptian Initiative for Personal Rights and Interights v. Egypt*, Decision, 16 December 2011; and Human Rights Watch, 'Syria: Detention and Abuse of Female Activists', 24 June 2013.

43 Sexual violence was a prominent feature of the post-election violence in Kenya in late 2007 and early 2008. At least 3,000 women were raped and up to 40,000 people fell victim to some form of sexual violence. Despite more than 600 complaints being filed for rape, gang rape, forced pregnancy, and deliberate transmission of HIV, the Kenyan Government has so far failed to prosecute a single perpetrator. As of writing, the case (*Coalition on Violence Against Women and Ors v. Attorney-General of Kenya and Ors*) was being heard by the Constitutional and Human Rights Division of the High Court of Kenya in Nairobi.

44 K. Bennouna, 'Do we need new international law to protect women in armed conflict?', *Case Western Reserve Journal of International Law*, 38 (2006), p.370. That is not to say that males are not also victims of sexual violence in armed conflict—of course they are. See A. Priddy, 'Sexual Violence Against Men and Boys in Armed Conflict', in S. Casey-Maslen (ed.) *The War Report 2013*, OUP, forthcoming, December 2014.

45 Office of the UN High Commissioner for Refugees and Save the Children, 'Sexual violence and exploitation: the experience of refugee children in Guinea, Liberia and Sierra Leone', February 2002.

girls are vulnerable to sexual violence while trying to secure transport, shelter, food or safe passage across borders. Once in a refugee or internal displacement camp, individuals remain vulnerable owing to lack of security and infrastructure, as well as loss of family and/or community protection.<sup>46</sup> 'Survival sex'—where desperate families agree to 'marriages' of girls to receive money, food, shelter, access to services or protection from further sexual violence against other members of the family—is still widely reported in refugee camps.<sup>47</sup>

## Gender-based discrimination and access to medical treatment for the 'wounded and sick'

Owing to security and/or resource constraints, as well as cultural and religious reasons, the ability of women survivors of sexual violence to access medical services and rehabilitation during conflict is often limited. For a woman or girl who has been raped, access to medical treatment, including emergency contraception or termination services, is vital. Yet many women and girls are denied these services, forcing them to undergo a dangerous and illegal abortion (thereby exposing themselves to prosecution, and often also to severe health risks) or carry on with an unwanted pregnancy.<sup>48</sup> The potential fatal consequences of pregnancy are real for all women: maternal mortality and morbidity is so grave a problem that every day almost 800 women die from pregnancy related complications and for every woman who dies 20 more experience severe complications.<sup>49</sup> In some

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**46** See: K. T. Seelinger with L. Wagner, *Safe Haven: Sheltering Displaced Persons from Sexual and Gender-Based Violence. Case Study: Haiti*, Human Rights Center, University of California, Berkeley, in conjunction with the Office of the UN High Commissioner for Refugees (UNHCR), Geneva, May 2013. According to UNHCR, globally 42.5 million people had been forcibly displaced as of 2011. UNHCR, *Global Trends 2011, 2012*, p. 1.

**47** Save the Children, *Unspeakable Crimes against Children: Sexual Violence in Conflict*, London, March 2013, p. 11.

**48** The Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment on the right to health, highlights that women have specific needs relating to their reproductive and sexual health, and that 'the realization of women's right to health requires the removal of all barriers interfering with access to health services... including in the area of sexual and reproductive health. It is also important to undertake preventative, promotive and remedial action to shield women from ... norms that deny them their full reproductive rights'. CESCR, General Comment No. 14: Right to Health, UN doc. E/C.12/2000/4, 11 August 2000, §21.

**49** Most maternal deaths are due to haemorrhage, infection, unsafe abortion, eclampsia and obstructive labour—all of which are preventable through accessible and high quality health care including safe abortion services. World Health Organization, *Why do so many women still die in pregnancy or childbirth?*, 6 May 2014.

conflict-affected states, such as the Democratic Republic of the Congo (DRC) and the Republic of Congo,<sup>50</sup> pregnancy can often be tantamount to a death sentence, particularly for girls whose underdeveloped bodies struggle to cope with pregnancy and childbirth, aside from the internal injuries sustained during rape.<sup>51</sup> Despite this, the United States of America (USA) currently does not allow its humanitarian aid to be used to provide termination services to women and girls who are pregnant as a result of rape in armed conflict. The ramifications of this for women are dire. As the USA is the largest humanitarian donor, most major international humanitarian agencies do not offer termination services for fear of jeopardizing their US funding. Doctors Without Borders is a notable exception, owing to its policy of not accepting US funding.<sup>52</sup>

This denial of medical treatment and the disproportionate impact it has on women and girls is unlawful under both international humanitarian law (IHL) and human rights law. Under IHL, the basic duty to give necessary medical care to the wounded and sick reflects customary international law. In both international and non-international armed conflicts:

[T]he wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones.<sup>53</sup>

A person who is raped falls within the category of 'wounded or sick' owing to the severe mental and physical trauma suffered. Excluding termination services from the treatment provided to the 'wounded or sick' in armed conflict is thus a violation of the right to medical care, and is also 'a violation of the prohibition on "adverse distinction" found in Common Article 3, the Additional Protocols to the Geneva Conventions and customary international law'.<sup>54</sup> Any policy that denies access to emergency contraception and termination services, thereby failing to take into account the often inevitable consequences of the rape of women, is

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50 Over their lifetime Congolese women face a 1-in-24 chance of dying from complications arising from pregnancy or childbirth. 'Congo's maternal mortality rate exacerbated by poverty and ignorance', *Guardian*, 11 May 2012.

51 In peacetime, girls aged under 15 in the DRC are five times more likely to die during pregnancy or childbirth compared to those aged over 20; this risk will clearly be higher during armed conflict when maternal health services are less likely to be available. Save the Children, *Unspeakable Crimes against Children: Sexual Violence in Conflict*, p. 16. See also *Harvard Humanitarian Initiative and Oxfam International*, 'Now the world is without me: an investigation of sexual violence in Eastern Democratic Republic of Congo,' April 2010, p. 41.

52 'Abortion in cases of rape: New rifts in an old debate', *Washington Times*, 12 April 2014.

53 International Committee of the Red Cross (ICRC) Customary IHL Study, Rule 1. Emphasis added.

54 Professor Doswald-Beck's open letter to President Obama, 10 April 2013, on file with the author.

both discriminatory on the grounds of gender and amounts to cruel inhuman or degrading treatment where this forces a female to either undergo a dangerous illegal termination or carry an unwanted pregnancy.<sup>55</sup>

## Sociological and economic impact of sexual violence on women and girls

The sociological and economic impact of sexual violence on women and girls can be devastating. Sociological effects include the derogatory perception of victims as 'dishonoured' and 'disgraced', leaving them as outcasts, ostracized by their family and society and deemed 'unmarriageable'.<sup>56</sup> 'Honour' prevents women and girls from reporting sexual violence, including through fear of so-called 'honour killings', and from seeking or accessing medical assistance. Women and girls interviewed by the Independent Commission of Inquiry on Syria reported that it was worse for a girl to be raped than killed, such that many victims commit suicide after being raped.<sup>57</sup> It is not uncommon for female survivors of sexual violence to be forced into marrying the perpetrator or one of his family members, thereby further traumatizing the survivor and allowing impunity for the perpetrator. Female survivors of sexual violence often also face severe economic hardship as a result. Already marginalized, a female survivor may be unable to work due to the injuries that she has sustained and/or discriminatory attitudes towards her, leaving her and any children she may have, in extreme poverty. Girls are often forced to drop out of education as a result of becoming mothers. Women who have children as a result of rape by members of the enemy often face particularly toxic discrimination, and the plight of the children borne is often very bleak.

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<sup>55</sup> The Special Representative on sexual violence in armed conflict has repeatedly called for women and girls who have been raped to have access to safe abortion services. Report of the UN Secretary-General, sexual violence in conflict, UN doc. A/67/792 and S/2013/149, 14 March 2013, §12.

<sup>56</sup> *Ibid.*, §11.

<sup>57</sup> *Ibid.*, §12.

## The prohibition of sexual violence in armed conflict under international law

Sexual violence in armed conflict is prohibited under IHL, although mainly through the use of rather archaic and discriminatory references to 'honour' and 'special protection' that fail to recognize women as rights-holders, feeding instead the stereotype that women are weaker than their male counterparts and thereby perpetuating discriminatory attitudes.<sup>58</sup> It was not until the 1977 Additional Protocol II, which governs non-international armed conflict, that the language of honour and protection used in earlier IHL instruments was abandoned. Article 4(2) contains fundamental guarantees that prohibit: 'violence to the life, health and physical or mental well-being of persons'; 'cruel treatment such as torture [and] mutilation'; and 'outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prosecution and any form of assault.'<sup>59</sup> Rape and other forms of sexual violence are also prohibited under customary international law in both international and non-international armed conflicts.<sup>60</sup> Despite not being expressly listed, rape and 'any other attack on women's dignity' constitute a grave breach of the Geneva Conventions when committed in an international armed conflict against protected persons and as such invoke states' obligations to exercise universal jurisdiction over such offences.<sup>61</sup> Rape is also punishable as a war crime in non-international armed conflict as a serious violation of Common Article 3.

Under international criminal law, the Nuremberg International Military Tribunal's failure to explicitly sanction any form of sexual violence<sup>62</sup> has now been superseded by inclusion in the 1998 Rome Statute of the International Criminal

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**58** Article 27 of the 1949 Geneva Convention IV, talks of protecting women's 'honour'; Article 27 of the 1977 Additional Protocol I refers to women as needing 'special respect' and protection, placing sexual violence in a protection framework rather than a prohibition. See J. Gardam and M. J. Jarvis, *Women, Armed Conflict and International Law*, Kluwer, The Hague, 2001; J. Gardam, 'Women and the law of armed conflict: why the silence?', *International and Comparative Law Quarterly*, Vol. 46 (1997), p. 77.

**59** 1977 Additional Protocol II, Art. 4(2)(a) and (e).

**60** Rule 93 of the ICRC CIHL study.

**61** ICRC, Update on Aide-Memoire of 3 December 1992; T. Meron, 'Rape as a crime under international humanitarian law,' *American Journal of International Law*, Vol. 87 (1993), p. 427.

**62** Despite sexual violence being a prominent feature of the 1939–45 War sexual violence was not referred to in the charter of either the Nuremberg or the Tokyo tribunal. In one positive step towards addressing sexual violence during that conflict, in 1992 the Japanese Government officially apologized for forcing thousands of women, known as 'comfort women', into military sexual slavery. These women endured multiples rapes on a daily basis by soldiers who were 'encouraged by their commanding officers to use the "comfort women" facilities'. Preliminary Report Submitted by the Special Rapporteur on violence against women its causes and consequences, UN doc. E/CN.4/1995/42, 1994, §§288–90.



Court of offences of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or 'any other form of sexual violence of comparable gravity' (as both crimes against humanity and war crimes).<sup>63</sup> The International Criminal Court (ICC) and the two ad hoc international criminal tribunals have clarified definitions of these offences and removed some hurdles to prosecution, for example by recognizing that sexual violence may occur as a result of coercive circumstances. This means that use or threat of force or other forms of coercion preclude the possibility of 'genuine consent' and thus that any person who engages in prohibited sexual violence in these circumstances is committing an act of sexual violence.<sup>64</sup> Furthermore, international criminal tribunals have affirmed that rape and sexual violence can constitute an act of genocide, when committed with intent to destroy in whole or in part a national, ethnic, racial, or religious group,<sup>65</sup> and may also constitute the offence of torture given that rape and 'sexual violence gives rise to severe pain or suffering'.<sup>66</sup> Nevertheless, prosecution rates to date are shamefully low. The ICC has failed to prosecute a single case of sexual violence, despite ample evidence of sexual slavery and rape in the *Lubanga* case for example.<sup>67</sup>

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**63** ICC Statute, Arts 7(1)(g) (crimes against humanity); 8(2)(b)(xxii) (as a war crime in an international armed conflict); and 8(2)(e)(vi) (as a war crime in a non-international armed conflict).

**64** See Elements 1 and 2 of the Elements of Crimes relating to Art. 7(1)(g); Art. 8(2)(b)(xxii); and Art. 8(2)(e)(vi); International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Kunarac, Kovač, and Vuković*, Judgment (Appeals Chamber) (Case No. IT-96-23) 12 June 2002, §§99 and 131–2. Whether or not the victim put up a fight or resisted is irrelevant. Rule 70 of the ICC Rule of Procedure and Evidence. See *ibid.*, §128.

**65** 1948 Convention on the Prevention and Punishment of the Crime of Genocide; ICTR, *Prosecutor v. Akayesu*, Judgment (Trial Chamber) (Case No. 96-4-T), 2 September 1998, §597; ICTR, *Prosecutor v. Musema*, Judgment (Trial Chamber) (Case No. ICTR-96-13-A), 27 January 2000.

**66** ICTY, *Prosecutor v. Kvočka and ors*, Judgment (Appeals Chamber) (Case No. IT-98-30/1-A), 28 February 2005, §284. Article 1 of the 1984 Convention Against Torture. International criminal law does not require the perpetrator of an act of torture to be a public official or a person acting with the acquiescence of a public official.

**67** ICC, *Prosecutor v. Thomas Lubanga*, Decision on Sentence (Trial Chamber) (Case No. ICC-01/04-01/06-2901), 10 July 2012, §60. In her dissenting opinion, Judge Odio Benito expressed her frustration, affirming that exclusion of charges related to sexual violence restricts the judges' ability to render justice for victims.

## Sexual violence in armed conflict and its aftermath: the international community's response

Despite the prevalence of sexual violence in armed conflict and its clear prohibition, only in recent times has the international community demonstrated a clear and serious interest in tackling sexual violence in armed conflict. One could argue that this interest emerged during the 1993 World Conference.<sup>68</sup> Against the backdrop of the large-scale sexual violence occurring in the former Yugoslavia, a number of NGOs highlighted the issue of sexual violence against women during the Conference, including by inviting survivors from Japan, Palestine, Peru, and Somalia to share their experiences.<sup>69</sup> Support was galvanized for the argument that violence against women is a human rights issue, and as such is of concern to the international community, leading to the final VDPA text which expressly highlights the vulnerability of women to sexual violence during armed conflict, condemns sexual violence, in particular rape, sexual slavery and forced pregnancy, and treats such crimes as human rights violations that demand 'a particularly effective response'.<sup>70</sup> The progress reflected in the VDPA undoubtedly influenced the 1993 Declaration on the Elimination of Violence against Women, which explicitly recognizes that women during conflicts are particularly vulnerable to sexual violence.<sup>71</sup> It arguably also led to sexual violence against women in armed conflict being one the major themes of the Fourth World Conference on Women, held in Beijing in November 1995. The resulting Beijing Declaration and Platform for Action identifies women and armed conflict as one of 12 critical areas of concern to be addressed by the international community.<sup>72</sup>

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**68** Despite evidence of wide-scale sexual violence being used in the Bangladesh conflict in 1971, no express reference was made to sexual violence in the 1974 Declaration on the Protection of Women and Children in Emergency and Armed Conflict. Throughout the 1980s the UN continued to refer to the vulnerability of women during armed conflict but failed to make any express reference to sexual violence. Even the 1979 CEDAW has no specific reference to sexual violence against women in armed conflict—or in peacetime for that matter.

**69** Bunch & Reilly, *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women's Human Rights*, pp. 4–6.

**70** VDPA, §38.

**71** UN Declaration on the Elimination of Violence against Women, preamble and Art. 2.

**72** UN, Report of the Fourth World Conference on Women held in Beijing from 4 to 15 September 1995, including the Agenda, the Beijing Declaration and the Platform for Action, UN doc. A/CONF.177/20, 17 October 1995, §135.

Today, unprecedented attempts are being made by the international community to prevent sexual violence in armed conflict, including under the UN Security Council's Women, Peace and Security agenda.<sup>73</sup> The Security Council has adopted several resolutions on the issue, including Resolution 1960 of 2010 which calls for the naming of parties suspected of committing or of being responsible for patterns of rape and other forms of sexual violence (although it should be noted that this is restricted to armed conflicts on the Security Council's agenda).<sup>74</sup> A Special Representative of the Secretary-General on Sexual Violence in Conflict has been appointed, whose annual reports include a global overview of implementing measures to counter sexual violence and a list of those suspected of committing or of being responsible for patterns of rape and other forms of sexual violence. In 2013, 144 states endorsed the 2014 Declaration of Commitment to End Sexual Violence in Conflict and the G8 launched its Preventing Sexual Violence Initiative. Furthermore, under the UN Arms Trade Treaty states parties have to consider whether arms proposed for transfer will be used to commit acts of sexual violence.<sup>75</sup>

## Tackling impunity

Despite the unprecedented attention that tackling sexual violence is currently receiving, impunity for perpetrators remains the norm. To overcome impunity, the hurdles that prevent survivors accessing justice, including those of a financial and practical nature, as well as the lack of rights awareness, need to be overcome. The stigma attached to sexual violence, and therefore the secrecy and silence that surround it, need to be overcome. The archaic ideology that centres women's protection around honour and modesty needs to be abandoned. Not only is this ideology hindering women's protection and access to services, by distracting from the fundamental point that sexual violence is a violation of women's fundamental human rights to physical integrity, dignity, and protection from torture and other ill-treatment, it also implies that those who have been subjected to sexual violence have somehow become 'dishonoured'.

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<sup>73</sup> UN Security Council Resolution 1325 on women, peace and security.

<sup>74</sup> Resolution 1325 stresses the importance of women's equal and full participation in the prevention and resolution of conflicts, peace-building, and peacekeeping. It calls on member states to incorporate women and the gender perspective in all areas of peace-building. Resolution 1820 (2008) explicitly links sexual violence as a tactic of war with women, peace and security issues, and highlights the fact that sexual violence in conflict constitutes a war crime and demands parties to armed conflict to immediately take appropriate measures to protect civilians from sexual violence, including training troops and enforcing disciplinary measures. See also Resolutions 1888 (2009); 1889 (2009); 1960 (2010); 2106 (2013); and 2122 (2013).

<sup>75</sup> See Arts. 6 and 7.

At the international level, the UN Security Council and/or states parties to the ICC must refer all situations where large-scale sexual violence is used to the Office of the Prosecutor to the ICC. At the national level, states should invoke the various forms of jurisdiction available to them to promptly, independently, and effectively investigate and prosecute those within their jurisdiction who are suspected of having committed an act of sexual violence during armed conflict.<sup>76</sup> This includes action under the grave breaches regimes of the 1949 Geneva Conventions and the 1977 Additional Protocol I.<sup>77</sup> However, because the grave breach regime applies as such only to international armed conflicts,<sup>78</sup> they offer little help to tackle impunity for sexual violence in today's context, where the vast majority of armed conflicts are non-international in character. States should therefore extend compulsory universal jurisdiction also to cover non-international armed conflicts.

Zero tolerance for sexual violence must be adopted by all military groups, including non-state actors,<sup>79</sup> and by all humanitarian personnel. UN peacekeeping operations should take further concrete measures to ensure greater participation of female peacekeepers in areas of high levels of sexual violence to both challenge the gender inequality that perpetuates sexual violence and also to encourage female survivors to communicate with female peacekeepers, who they are likely to feel are more sensitive to their needs.<sup>80</sup> The prevention and prosecution of sexual violence must also be a central element of all peace and ceasefire agreements.

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**76** Bases for establishing jurisdiction are: territorial jurisdiction, based on the location of the crime; active personality principle of jurisdiction, based on the nationality of the perpetrator under which a state may prosecute one of its nationals for acts committed abroad; and passive nationality principle of jurisdiction, based on the nationality of the victim, under which a state may prosecute a non-national for acts committed against a national abroad. See A. Cassese, *International Criminal Law*, 3<sup>rd</sup> edn, OUP, 2013, pp. 271–8.

**77** The grave breaches regime of the Geneva Conventions allow for universal jurisdiction – a point recently reinforced by the G8 Declaration on Preventing Sexual Violence in Conflict (London, 11 April 2013, §4). Under the principle of compulsory universal jurisdiction any state is obliged to investigate and prosecute any individual in respect of international crimes committed abroad or to extradite them for prosecution to another state.

**78** Though some diverging views do exist on this. See Separate Opinion of Judge Georges Abi-Saab in ICTY, *Prosecutor v. Tadić*, Decision on Jurisdiction (Appeals Chamber) (Case No. IT-94-1), 15 July 1999.

**79** Armed groups should be encouraged, for instance, to sign Geneva Call's Deed on Commitment for the Prohibition of Sexual Violence in Situations of Armed Conflict and Towards the Elimination of Gender Discrimination.

**80** UNIFEM, UN Action and DPKO *Addressing conflict-related sexual violence: an analytical inventory of peacekeeping practice*, 2010, p. 9.

# Trafficking of women and girls

Twenty years after the VDPA stressed the importance of eliminating all forms of exploitation and trafficking of women—a form of violence against women—<sup>81</sup> human trafficking remains one of the major challenges to the protection of women's rights.<sup>82</sup> Today, human trafficking is a multi-billion dollar industry dominated by organized criminal gangs.<sup>83</sup> Those trafficked are treated as commodities by their enslavers and are used for sexual exploitation, forced labour, domestic slavery,<sup>84</sup> removal and trafficking of human organs, forced drug trafficking, forced begging, and the servicing of illegal adoption programmes. A trafficked woman or girl may be exposed to multiple abuses, for example sexual exploitation while in domestic servitude.

The number of women and girls trafficked annually is rising rather than declining.<sup>85</sup> This is thought to be due to a range of reasons including the global financial crisis, armed conflict, poverty, lack of education, reduced travel costs, new technology such as the Internet, onerous obstacles to legal migration, and undoubtedly a failure by states to hold perpetrators to account.<sup>86</sup> Trafficking denies or impacts upon victims' right to life, liberty, and security of the person; freedom from slavery; freedom from torture and ill-treatment; freedom of movement; and the rights to health and to education. By its very definition, trafficking in human beings constitutes a gross human rights violation.<sup>87</sup>

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**81** CEDAW, General Recommendation No. 19, UN doc. HRI/GEN/1/Rev.8, 8 May 2006; VDPA, Art. 18; UN Declaration on the Elimination of Violence against Women, Art. 2(b).

**82** As recognized in the Beijing Declaration and Platform for Action, Part C, §130.

**83** A. Gallagher, 'Recent Legal Development in the Field of Human Trafficking: A Critical Review of the 2005 European Convention and Related Instruments', *European Journal of Migration and Law*, Vol. 8 (2006), p. 163.

**84** Anti-slavery International, *Trafficking in Women, Forced Labour and Domestic Work in the Context of the Middle East and the Gulf Region*, 2005; Human Rights Watch, *Exported and Exposed, Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon and the United Arab Emirates*, 2007.

**85** According to conservative estimates, some 800,000 people are trafficked across international borders annually, though owing to underreporting the actual number is likely far higher. Approximately 80% are women and girls. This number excludes the many thousands of women and girls who are trafficked within states. US Department of State, *Trafficking in Persons Report*, June 2007, p. 6

**86** S. Scarpa, *Trafficking in Human Beings: Modern Slavery*, OUP, 2008, p. 13.

**87** Ms. Sigma Huda, Special Reporter on Trafficking in Persons, Statement at the Beijing + 10 Review, 7 March 2005.

Cultural and religious practices may also constitute forms of trafficking and slavery. *Devadasi*, for example, means 'female servant of god' and is practiced in Southern India. Girls, usually belonging to the Dalit community (a lower caste) are 'dedicated to god', meaning that they cannot marry and instead are forced to become temple prostitutes.<sup>88</sup> *Devadasi* are vulnerable to internal trafficking for their commercial sexual exploitation.<sup>89</sup> Similar practices, such as *Devaki* and *Trokosi* (the latter is a practice in which a girl is enslaved to a local priest as 'payment' in cases where a family member committed a crime) occur in Nepal,<sup>90</sup> and West African countries including Benin, Ghana, Nigeria, and Togo.<sup>91</sup>

Most trafficked women and girls are sexually exploited.<sup>92</sup> Sexual exploitation of trafficked women and girls occurs in both the domestic setting (for example, by early and forced marriage)<sup>93</sup> and the commercial setting (for example, forced prostitution, pornography, and other forms of sex work). Trafficking of women and girls for commercial sexual exploitation is particularly rife in south-east Asia, due at least in part to the sex tourism industry. There is a high demand for trafficked women and girls from pimps and brothels who are able to make greater profits by exploiting forced prostitutes (many of whom will be undocumented migrants forced to prostitute themselves in situations of duress) rather than from use of voluntary prostitutes who may demand greater pay and may choose to see fewer customers.<sup>94</sup>

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88 Scarpa, *Trafficking in Human Beings: Modern Slavery*, p. 15; Human Rights Watch, *Broken People, Caste Violence Against India's 'Untouchables'*, 1999.

89 Anti-Slavery International, *Women in Ritual Slavery, Devadasi, Jogini and Mathamma in Karnataka and Andhra Pradesh, Southern India*, 2007.

90 'Although the Children's Act in Nepal has forbidden this practice, it [*Devaki*] still continues in some parts of the country'. 'Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy: Cultural Practices in the family that are violent towards women', 2002, UN doc. E/CN.4/2002/83, §41.

91 Ben-Ari, 'Liberating Ghanaian girls from 'trokosi', *Campaign against ritual servitude in Ghana*', December 2001.

92 US Department of State, *Trafficking in Persons Report*, p. 6.

93 'Report of the Special Rapporteur on violence against women, its causes and consequences, Ms Radhika Coomaraswamy, on trafficking in women, women's migration and violence against women' UN doc. E/CN.4/2000/68, 2000, §74.

94 ILO, 'Forced Labor and Human Trafficking: Estimating the Profits', Geneva, March 2005, pp. 16–17.

## The consequences of trafficking on women and girls

The consequences of trafficking on the victim are normally devastating physically, psychologically, and socially. Victims may sustain life-changing or fatal injuries (including through torture). Substance abuse, depression, self-harm, suicide, and other mental health issues are common among victims.<sup>95</sup> Sexually exploited women and girls face a high risk of contracting sexually transmitted diseases, including HIV/AIDS, as well as of having unwanted pregnancies. Socially and economically, victims may face a life-time of disadvantage owing to denial of access to education and social stigmatization, particularly where they have been sexually exploited, thereby hindering their ability to reintegrate into the community from which were trafficked or even to integrate into the community to which they have been trafficked.

Those trafficked are often tricked or coerced into situations of exploitation from which they cannot escape. Drugs may be used to sedate victims or to make them dependent as a method of control. Victims may also be kidnapped, blackmailed, or sold by relatives. Although many are physically detained, others are intimidated into remaining where they are, for example through debt-servicing agreements 'that amount to little more than bondage'.<sup>96</sup> Victims trafficked for sexual and labour exploitation are often kept in a permanent condition of debt bondage, persuaded that they must repay travel and living costs, often with interest. Victims may initially think that the trafficker/exploiter is claiming what is rightly theirs and may believe that they will be able to earn money once the 'debt' is paid, which in turn may act as a disincentive to escape.

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<sup>95</sup> American Psychological Association, *Task Force Report Highlights Problem of Human Trafficking of US Women and Girls*, 12 March 2014.

<sup>96</sup> A. Gallagher, 'Recent Legal Development in the Field of Human Trafficking: A critical Review of the 2005 European Convention and Related Instruments', *European Journal of Migration and Law*, Vol. 8 (2006), p. 163.

## Definition of human trafficking

It is only in the last decade or so that human trafficking has gained the serious attention of the international community, and it was not until 2000 that human trafficking was defined under international law.<sup>97</sup> The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol), which supplements the 2000 UN Convention against Transnational Organized Crime, defines human trafficking as having three elements:<sup>98</sup> first, there must be an 'act' consisting of the recruitment, transportation, transfer, harbouring or receipt of a person; second, the consent of a person having control over another must be achieved by 'means' of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or position of vulnerability, or the giving or receiving of payments or benefits,<sup>99</sup> and third, the act and means must be for the purpose of exploitation, including, at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.<sup>100</sup> All three elements must be established, except for exploitation of a child when the 'means' requirement does not apply.<sup>101</sup>

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**97** Though note: the 1921 International Convention for the Suppression of the Traffic in Women and Children; the 1933 International Convention for the suppression of the Traffic in Women of Full Age; the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Note also other texts including the Office of the UN High Commissioner for Human Rights' Recommended Principles and Guidelines on Human Rights and Human Trafficking of 2002; and UNICEF Guidelines for Protection of the Child Victims of Trafficking of 2003. The following international human rights instruments are all either expressly or implicitly relevant to the trafficking of women and girls: the 1948 Universal Declaration of Human Rights; the 1966 International Covenant on Civil and Political Rights; CEDAW; the 1989 Convention on the Rights of the Child (CRC); the 2000 Protocol to the CRC on the Involvement of Children in Armed Conflict; the 2000 Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography; the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the 1969 Convention relating to the Status of Refugees; and the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. CEDAW explicitly prohibits the trafficking of women and the exploitation of the prostitution of others. See also A. Gallagher, *The International Law of Human Trafficking*, CUP, 2010), p. 12.

**98** Palermo Protocol, Art. 3.

**99** Consent is irrelevant if one of the 'means' is used, Palermo Protocol, Art 3(b).

**100** A. Gallagher, 'Human Rights and the New U.N Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis', *Human Rights Quarterly*, November 2001; UNODC, *Legislative Guide to the Protocol for the Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime*, Vienna, 2004.

**101** Palermo Protocol, Art 3(c). A child is defined as anyone aged under 18 (Art. 3(d)).



Drafters of the Palermo Protocol could not agree on whether voluntary adult prostitution should be considered as human trafficking and thus left the terms 'exploitation of the prostitution of others', or 'other forms of sexual exploitation' undefined.<sup>102</sup> States parties to the Protocol are required to enact legislation to criminalize human trafficking and to punish human traffickers.<sup>103</sup> The Protocol adopts a predominantly criminal law approach, focusing on the criminal responsibility of the trafficker, and only three provisions of the Protocol relate to victim protection and assistance. Nevertheless, the Protocol requires states parties to ensure their domestic legal systems contain measures that offer victims of trafficking the possibility of obtaining remedies for damage, though this does not amount to an obligation to ensure a remedy is actually provided.<sup>104</sup>

## Tackling impunity; providing an effective remedy; and prevention

Despite the efforts of the international community over the past decade, human trafficking continues to flourish around the world and remains extremely profitable and relatively risk-free for traffickers due to almost certain impunity, particularly in the context of trafficking to or from states affected by armed conflict. For example, following the conflict in the former Yugoslavia, the number of women and girls trafficked into the country to work in a growing number of brothels increased, in part to feed the demands of peacekeepers and humanitarian personnel.<sup>105</sup> It was widely reported that staff members of international organizations were involved in

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**102** The two (main) feminist positions on voluntary prostitution are radical feminism—which argues that both prostitution is a violation of women's fundamental human rights and consent to prostitution is not possible—and sex work feminism, which distinguishes between free and forced prostitution, and views sex work as a legitimate form of labour. A. D. Jordan, 'Human rights or wrongs? The struggle for a rights-based response to trafficking in human beings', *Gender and Development* Vol. 10 (2002), p. 28; K. Berry, 'The Prostitution of Sexuality. The Global Exploitation of Women', New York University Press, 1995, p. 23.

**103** Palermo Protocol, Art 5(1).

**104** *Ibid.*, Art. 6(6).

**105** Human Rights Watch, *Hope Betrayed: Trafficking of Women and Girls to Post-Conflict Bosnia and Herzegovina*, 2002; Refugee International, *Must Boys be Boys? Ending Sexual Exploitation and Abuse in Peacekeeping Missions*, 2005; 'Report of the Special Rapporteur on trafficking in persons, especially women and children, Sigma Huda, Addendum, Mission to Bosnia and Herzegovina', 2005, UN doc. E/CN.4/006/62/Add.2.

trafficking activities.<sup>106</sup> Specific protective and punitive measures are thus needed to protect women and girls from trafficking, by all actors, in states affected by armed conflict.<sup>107</sup>

As the UN Secretary-General has acknowledged, a jurisdictional gap exists because the UN cannot conduct criminal investigations, such that states must be 'encouraged to take steps to facilitate the exercise of criminal jurisdiction over persons participating in United Nations operations'. A zero tolerance approach has been adopted, and the UN Department of Peace Keeping Operations (DPKO) now trains peacekeepers against human trafficking before deployment.<sup>108</sup> As these initiatives are relatively recent, an effective assessment cannot yet be made of their impact. An increase in the number of female peacekeepers has been urged for by the Security Council as one way to contribute to decreasing sexual exploitation by peacekeepers and to promote gender equality more broadly.<sup>109</sup>

Enhanced efforts are needed to prosecute those who participate in trafficking. The holding to account of members of the military, police, and peacekeeping operations who participate in trafficking should be a priority for states. Targeting the demand for sexual exploitation, including prostitution and other forms of sexual exploitation, is a further fundamental step to eradicating the trafficking of women and girls.<sup>110</sup> There is an intimate link, in this regard, between trafficking and prostitution. This is one argument for criminalizing use of prostitutes as a way to discourage the demand for trafficked persons, particularly women and girls.<sup>111</sup> Those who knowingly use the services of a trafficking victim, and when this amounts to exploitation, should be prosecuted.<sup>112</sup> It is essential that counter-trafficking programmes take into consideration the link between trafficking and sex tourism.<sup>113</sup>

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**106** In response to further reports of sexual abuse by members of UN peacekeeping missions DPKO issued a policy paper in 2004 addressing human trafficking: DPKO, 'Human Trafficking and the UN Peacekeeping', Policy Paper, 2004, while the UN Secretary-General appointed a Special Adviser on Sexual Exploitation and Abuse and issued a bulletin entitled 'Special Measures for protection from sexual exploitation and sexual abuse' (UN doc. ST/SGB/2003/13, 2003).

**107** CEDAW, General Recommendation No. 19, §§14–16.

**108** DPKO, *Human Trafficking and the UN Peacekeeping*, Policy Paper, 2004.

**109** UN Security Council Resolution 1325, §§4–5.

**110** 'Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children', UN doc. A/HRC/4/23, 2007, §49.

**111** 'Report of the Special Rapporteur on trafficking in persons, especially women and children, UN doc. E/CN.4/2006/62, 2006, §88.

**112** Such a provision is contained in Art. 19 of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.

**113** Scarpa, *Trafficking in Human Beings: Modern Slavery*, p. 25.

Although many states have enacted legislation to criminalize trafficking, prosecutions are very rare. Victims are mainly undocumented migrants, who may not speak the language of the country of residence, and who may be reluctant to cooperate with any investigation or prosecution of their captors due to fear of reprisals, of deportation, or of themselves being prosecuted (for example, in the case of those forced into illegal prostitution).<sup>114</sup> Corruption, for example bribery of police, also appears to be a significant hurdle to investigation and prosecution of those responsible for or involved in trafficking.<sup>115</sup>

To increase prosecutions and eradicate impunity, greater assistance and protection must therefore be given to victims, including a place of refuge, legal assistance, translation, health care, counselling, temporary residence permits, and financial support and/or work permits. At the same time, however, victims must not be considered as solely a means to guarantee prosecution. They must also be treated as victims of serious human rights abuses who are entitled to rehabilitation and redress. To do otherwise would mean that those who are unwilling to cooperate with investigations or prosecutions would be excluded from protection and rehabilitation services, enjoyment of which should not be predicated upon such cooperation. Tailored rehabilitation programmes should be established to meet victim's needs,<sup>116</sup> including as a form of redress. The law should also provide that victims of trafficking are immune from criminal prosecution for any unlawful activities which they were forced to carry out, particularly if existing criminal law defences, such as duress, are unavailable in such circumstances.

As already alluded trafficking in persons is not exclusively a matter of law and order but also concerns violation of victims' human rights.<sup>117</sup> However, a victim-based approach appears to be lacking in the international community's attempts to tackle the trafficking of human beings. The right to effective remedies and reparation, fundamental to the effective enjoyment of human rights, must be guaranteed

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**114** The 2004 EU Directive on residence permits for victims of trafficking adopted in 2004 requires that states inform victims, at the discretion of national authorities, of the possibility of being granted temporary residence permits in exchange for cooperation with police or judicial authorities. Victims are entitled to a 'reflection period' (the duration of which is decided by the state) during which they can decide, away from influence of their captors, if they wish to cooperate with the criminal prosecution. During the 'reflection period' victims cannot be expelled and will be entitled to emergence medical and psychological care, and material support. EU Council Directive 2004/81/EC on the issue of residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with authorities, Arts 5 and 7.

**115** 'Report of the Special Rapporteur on trafficking in persons, especially women and children, Sigma Huda, Addendum, Mission to Bosnia and Herzegovina', UN Doc. E/CN.4/006/62/Add.2, 2005, §§19– 20.

**116** Human Rights Committee, 'Concluding observations: Slovenia', UN Doc. C/PR/CO/84/SVN, 2005, §11.

**117** 'Report of the Special Rapporteur on trafficking in persons, especially women and children, UN doc. E/CN.4/2006/62, 2006, §§7–9.

to all victims of human rights violations, including trafficking.<sup>118</sup> This includes confirmation of the status of the victim as a victim of trafficking (and of human rights abuses) and is particularly important to women and girls who have been subjected to sexual exploitation. According to the 2000 UN Convention against Transnational Organized Crime, the provisions of which apply *mutatis mutandis* to the Palermo Protocol, states parties are required to 'establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this convention'.<sup>119</sup> Although this provision does not require that victims of trafficking be *guaranteed* compensation or restitution, it does require that states have procedures in place that allow victims of serious transnational crimes to seek restitution.<sup>120</sup>

Enhanced efforts are also needed to tackle the root causes of human trafficking, including the feminization of poverty, the sexual objectification of women, gender-based denial of economic and social development, education, safe maternal and other health care, and social support, as advocated for by the VDPA.<sup>121</sup>

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**118** UN Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 'States must redress wrongs committed against trafficked persons – "It is their human rights obligation"', 24 November 2010; 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005; UN Human Rights Council, 'Trafficking in Persons, Especially Women and Children: regional and sub-regional cooperation in promoting a human rights based approach to combating trafficking in persons, Resolution 14/2, 23 June 2010.

**119** Art. 25(2).

**120** A. Gallagher, 'The right to an effective remedy for victims of trafficking in persons: A survey of International Law and Policy', November 2012, p. 7.

**121** VDPA, Part II, §18.

# Intimate partner violence

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One of the most common forms of violence experienced by women is 'intimate partner violence', which includes physical, sexual, and emotional abuse and controlling behaviour by an intimate partner.<sup>122</sup> The term intimate partner violence is used to capture the experience of women in intimate relationships within and beyond the formal marriage setting.<sup>123</sup> Intimate partner violence is experienced by women from all corners of the globe and from all cultural, religious, and socio-economic groups. Killing, beating, burning, kicking, biting, stabbing, shooting, rape and other forms of sexual abuse, deliberate infection with a sexually transmitted disease, and psychological abuse, such as controlling and humiliating behaviour, are all forms of intimate partner violence to which women are subjected. The different types of violence often coexist, meaning that a woman may be subjected to multiple forms of abuse by her partner.<sup>124</sup> Globally, almost one third of all women who have been in a relationship have experienced physical and/or sexual violence by their intimate partner. In some regions, nearly 40% of women have experienced intimate partner violence.<sup>125</sup> Globally, 38% of all murders of women are committed by intimate partners.<sup>126</sup>

Entrenched gender inequality and chauvinistic norms and beliefs that continue in some societies perpetuate intimate partner violence, including the belief that a man is superior to a woman and thus has a right to assert power over her, or that a man has a right to physically discipline a woman for 'incorrect behaviour' or that sexual intercourse is a man's 'right' during marriage.<sup>127</sup> Gender inequality also affects the ability of women to flee violent relationships. Women may remain in a violent relationship through fear of retaliation if they leave, for lack of alternative economic support, lack of family and community support, inequitable divorce and custodial laws, the stigma of divorce in some societies, the stigma and taboo surrounding

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**122** 'In-depth study on all forms of violence against women, Report of the Secretary-General', UN doc. A/61/122/Add.1, 6 July 2006, §112.

**123** Of course men too are subjected to intimate partner violence and intimate violence can occur in same-sex relationships. However, the vast majority of incidences of intimate partner violence are directed at a female by a male.

**124** WHO, 'Multi-country study on women's health and domestic violence against women: initial results on prevalence, health outcomes and women's responses', Geneva 2005, p. 1.

**125** *Ibid.*, p. 3.

**126** *Ibid.*, p. 2.

**127** WHO and London School of Hygiene and Tropical Medicine, *Preventing intimate partner and sexual violence against women: taking action and generating evidence*, Geneva, 2010.

sexual violence, fear of ostracism from family and community networks, fear for any children they may have, and a hope that the partner will change.

## The consequences of intimate partner violence and immunity of the perpetrator

The consequences of intimate partner violence on victims includes physical injuries such as broken bones and teeth, lacerations, damage to hearing and sight, unwanted pregnancy, unsafe abortions, urinary tract infections, infection with diseases including HIV/Aids, incontinence, and death. Women subjected to physical violence by their partner suffer high levels of depression, self-harm, suicide, post-traumatic stress disorder, drug and alcohol addiction, sleeping and eating disorders, and anxiety disorders. Studies have found that high levels of intimate partner violence used against pregnant women increase the likelihood of maternal mortality, miscarriage, stillbirth, premature labour, foetal injury, and low-birth weight.<sup>128</sup> Some studies indicate that a vicious cycle exists whereby children exposed to intimate partner violence against their mother or female carer are more likely to perpetrate or experience intimate partner violence in later life.<sup>129</sup>

Intimate partner violence denies or impacts upon the enjoyment of the victim's fundamental rights to life, liberty, and security of the person, the right to be free from torture and ill-treatment, the right to equality in marriage and family relations, and to an adequate standard of living as well as to the highest attainable standards of physical and mental health. Where tolerated by the state, intimate partner violence denies the victim the right to equal protection of the law and perpetuates a culture of impunity. Despite this, there are still states in which intimate partner violence is not prohibited. Marital rape, for example, is not expressly criminalized in 27 states, meaning that today 2.6 billion women live in countries where marital rape is not a criminal offence.<sup>130</sup>

Impunity of the perpetrator of intimate partner violence is still the norm. Impunity continues for multiple interdependent reasons that are all grounded in gender inequality, including lack of domestic criminal legislation, lack of political will to tackle intimate partner violence, underreporting (for multiple reasons including

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<sup>128</sup> WHO, *Understandings and addressing violence against women, Intimate partner violence*, Geneva, 2012.

<sup>129</sup> *Ibid.*

<sup>130</sup> UN Women, *Progress of the Worlds Women: In Pursuit of Justice, 2011*; 'UN Women Justice Report: get the data', *Guardian*, 6 July 2011.

fear, social stigma, and lack of equitable family and property legalisation)<sup>131</sup> and lack of effective police investigations.

## Due diligence

Despite impunity remaining the norm, things have moved on since the VDP. Only a few decades ago, intimate partner violence was viewed by the international community as a matter within the private sphere and thus not of public concern. It is now understood to be a violation of women's human rights, and as such states have an obligation to act with due diligence to prevent and prosecute it. The due diligence standard serves as a tool for assessing states' fulfilment of their obligations to protect and respect human rights.<sup>132</sup> The due diligence standard, as a means of assessing responsibility for violence against women, was first articulated in General Comment No. 19 of the CEDAW Committee, which explains that states 'may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence'.<sup>133</sup> The due diligence standard was repeated in the 1993 Declaration on the Elimination of Violence against Women, which urges states 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>134</sup>

Since its first articulation in the context of violence against women in the early 1990s, the due diligence standard has been affirmed and expanded upon by national and regional courts, treaty bodies, Special Procedures, and in many resolutions.<sup>135</sup> As recently affirmed by the General Assembly, states

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**131** According to a recent study, only 14% of women in Europe reported incidents of serious intimate partner violence. EU Agency for Fundamental Rights, *Violence against Women an EU Wide Survey*, Luxembourg, 2014, p. 3.

**132** The concept of due diligence was first developed by the Inter-American Court of Human Rights, in 1988 in a case concerning state responsibility for enforced disappearances. *Velasquez Rodriguez v. Honduras*, Series C, No. 4, 29 July 1988, §172; see also European Court of Human Rights, *Osman v. United Kingdom*, Judgment (Grand Chamber), 28 October 1998.

**133** CEDAW Committee, General Recommendation No. 19, UN doc. A/47/38, 1992, §19.

**134** Declaration on the Elimination of Violence against Women, Art. 4 (c).

**135** *Goekce (deceased) v. Austria*, CEDAW/C/39/D/6/2005, 6 August 2007, §12.1.2; *A. T. v. Hungary*, CEDAW/C732/D/2/2003, 26 January 2005; *Yildirim (deceased) v. Austria* (6/2005), CEDAW/C39/D/6/2005, 6 August 2007; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994); Inter-American Convention of Belem do Para (1994); Beijing Platform for Action (1995), §124(b); Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (2010), Art. 5; ECtHR, *Bevacqua v. Bulgaria*, Judgment, 2008; ECtHR, *Opuz v. Turkey*, Judgment, 2009.

have the obligation, at all levels, to promote and protect all human rights and fundamental freedoms for all, including women and girls, and must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls and eliminate impunity and should ensure protection, including adequate enforcement by police and the judiciary of civil remedies, orders of protection and criminal sanctions, and provisions of shelters, psychosocial services, counselling and other types of support services, in order to avoid revictimization....<sup>136</sup>

It can now be said that the obligation to prevent and respond to acts of violence against women with due diligence is a rule of customary international law.<sup>137</sup>

States are accountable for the actions of private actors if they fail to act with due diligence to prevent, investigate, and punish acts of intimate partner violence and fail to provide an effective remedy.<sup>138</sup> States are obligated to apply the due diligence standard without discrimination, meaning they must apply the same levels of commitment to preventing, investigating, and prosecuting intimate partner violence as they would for any other form of criminal violence.<sup>139</sup> Furthermore, states must act in good faith when implementing their due diligence obligation and must thus endeavour to effectively fulfil their obligations and not merely 'go through the motions' of enacting legislation.<sup>140</sup> States must provide *real* and *effective* prevention and protection mechanisms, and punishment and reparations for intimate partner violence, tailored to women's needs. The focus therefore, in assessing states' fulfilment of their obligations, is in analysis of results.<sup>141</sup>

Considerations for determining whether a state is fulfilling its due diligence obligations include its ratification of international and regional human rights

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**136** UN General Assembly Resolution 67/144, 2013, §11.

**137** Special Rapporteur on Violence Against Women, its Causes and Consequences, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, UN doc. E/CN.4/2006/61, 2006, §29; L. Hasselbacher, 'State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection', *Northwestern Journal of International Human Rights*, Vol. 8 (2010).

**138** CEDAW Committee, General Recommendation No. 19; IACtHR, *Velasquez Rodriguez v. Honduras*, Judgment, 29 July 1988; ECtHR, *Osman v. United Kingdom*, 1998; Istanbul Convention, 12 April 2011, Art. 5.

**139** Special Rapporteur on Violence Against Women, its Causes and Consequences *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, §35.

**140** Special Rapporteur on Violence Against Women, its Causes and Consequences *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, §36; CEDAW Committee, *Goekce (deceased) v. Austria*; and *Yildirim (deceased) v. Austria*.

**141** Special Rapporteur on Violence Against Women, its Causes and Consequences, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, §37.



treaties (without reservations that contravene the object and purpose of these treaties); constitutional guarantees of gender equality; adequate national legislation prohibiting violence against women; action to promote gender equality; and collection of data on the incidence of violence against women. Whereas the due diligence analysis had tended to focus on states' responses to intimate partner violence, it is clear that it now applies to all aspects of the elimination of intimate partner violence—and violence against women in general—in prevention, protection, punishment, and reparations.<sup>142</sup>

## Prevention

To prevent intimate partner violence, states must adopt a zero tolerance policy and enact criminal legislation prohibiting intimate partner violence in all its forms and establish adequate sanctions for it in domestic law. Civil remedies also need to be available, including restraining orders and expulsion orders. National awareness-raising campaigns should be run to highlight the forms that intimate partner violence take and its consequences. Police, prosecutors, the judiciary, and other public officials should be trained on prevention, investigation, and prosecution of intimate partner violence.<sup>143</sup> The root causes of all forms of violence against women, i.e. discrimination and gender inequality, should be tackled through education and policy reform, including revocation of discriminatory property and family laws. Cultural and religious customs and traditions that are used to justify violence against women must be prohibited and campaigns launched to challenge their acceptance in society. Women should be empowered through education and legal literacy to break cycles of accepting subordination and violence.<sup>144</sup>

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<sup>142</sup> *Ibid.*, §15.

<sup>143</sup> CEDAW Committee, *Vertido v. The Philippines*, CEDAW/C/46/D/18/2008, 16 July 2010.

<sup>144</sup> Special Rapporteur on Violence Against Women, its Causes and Consequences *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, §80; Istanbul Convention, Art. 12.

## Protection

To protect those that are experiencing intimate partner violence, services such as telephone hotlines, shelters, legal assistance, health care, restraining orders and financial assistance should be freely and readily available.<sup>145</sup> Some of these services, such as hotlines, may be provided by NGOs. This does not mean, however, that states can delegate their due diligence obligations, since the state always remains ultimately responsible for fulfilling its obligations.<sup>146</sup> Strong protection measures, such as shelter (enabling the victim to flee her abuser) and restraining orders (to protect women from retaliation) are not only necessary to secure the fundamental rights of the victim but are also essential to providing an environment conducive to seeking and cooperating with prosecutions.<sup>147</sup>

## Punishment

Those who have committed an act of intimate partner violence—or any other form of violence against women—must be prosecuted to clearly convey the message to society that such violence is unacceptable. Specialized investigatory units within the criminal prosecution services should be established to enable tailored and sensitive investigations are carried out in an effective manner.<sup>148</sup> Women should never be discouraged from pursuing a complaint, and mediation or cultural or social settlement should never be advocated as an alternative to criminal prosecution. There should be sufficient sanctions in place to punish public officials who do not fulfil their obligations to effectively investigate, prosecute, or punish intimate partner violence. While prioritizing the victim's safety and confidentiality, prosecutions should be pursued whether or not the victim supports the prosecution. It is also essential that perpetrators have access to free counselling and rehabilitation services.<sup>149</sup>

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**145** CEDAW Committee, *A.T. v. Hungary*; and *V. K. v. Bulgaria*, CEDAW/C/49/D/20/2008, 25 July 2011.

**146** Special Rapporteur on Violence Against Women, its Causes and Consequences, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, §34.

**147** *Ibid.*, §§82–3.

**148** *Vertido v. The Philippines*, CEDAW/C/46/D/18/2008, 16 July 2010.

**149** *A.T. v. Hungary*, 26 January 2005.

## Reparations

Despite the right to remedies and reparation being firmly enshrined in international human rights law, reparation appears to be the most underdeveloped area of the due diligence standard.<sup>150</sup> As intimate partner violence is a symptom of a wider gender inequality in society, reparations cannot be just about returning women to the situation they were in before the violence occurred. Instead, reparations should also have transformative potential.<sup>151</sup> Victims should be able to seek compensation and restitution as well as access to rehabilitation.<sup>152</sup> Truth is an essential element of reparation and victims should have access to all legal materials and full disclosure of the facts. A public apology for any failures by the state may be appropriate, though the right of the victim to confidentiality must always be respected.

Finally, guarantees of non-repetition are an essential element of redress and 'offer the greatest potential for transforming gender relations'. By promising to ensure non-recurrence, 'such guarantees trigger a discussion about the underlying structural causes of the violence and their gendered manifestations and a discussion about the broader institutional or legal reforms that might be call for to ensure non-repetition'.<sup>153</sup>

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**150** UN Basic Principles and Guidelines on the Right to Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law,; Special Rapporteur on Violence Against Women, its Causes and Consequences, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, §55.

**151** Special Rapporteur on Violence Against Women, *Reparations to Woman Who Have Been Subjected to Violence*, UN doc. A/HRC/14/22, §§31 and 85.

**152** *V.V.P. v. Bulgaria*, CEDAW/C/53/D/31/2011, 12 October 2012.

**153** Special Rapporteur on Violence Against Women, *Reparations to Woman Who Have Been Subjected to Violence*, UN doc. A/HRC/14/22, §62.



# Concluding remarks

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Twenty years after the VDPA affirmed the universality of human rights, meaning that rights should be enjoyed by all irrespective of sex, gender, religion, physical or mental ability, race, social or economic status, nationality or any other status, up to half the population of the human race are still denied enjoyment of their basic human rights on a daily basis because of their gender. In order to secure the universal enjoyment of rights, the human rights of women must be unconditionally protected and cannot, and must not, be negated in the interest, real or perceived, of culture or religion or any other ideology.

The VDPA also confirmed that human rights are indivisible, yet the international community has failed to adequately address the link between women's social and economic rights with their civil and political rights. Women who are socially and economically discriminated against, for example through being denied access to education and employment, are more vulnerable to other abuses such as forced prostitution and early marriage. Understanding this is critical to the advancement of women's human rights. Furthermore, the deep-rooted gender inequality which continues to dominate societies must be challenged through education and policy. This includes through work to ensure all women have equal access to education, by removal of discriminatory family and inheritance laws, prohibition of media and practices that objectify women, and an increase in the number of women involved in politics and business to reflect society, including through quotas.

Victims of violence against women face multiple layers of discrimination, both in the act of violence itself and in denial of access to services, for example rape in armed conflict and the denial of access to termination services of an unwanted pregnancy. The vast majority of the perpetrators of violence against women and girls continue to enjoy impunity, while female victims continue to be denied access to justice and redress. The next 20 years need to see states and international agencies adopting a zero tolerance policy towards any form of violence against women; witness immunity for violence against women eradicated; and discrimination in the provision of services removed.

Charlotte Bunch said in 1994:

More women die each day from various forms of gender-based discrimination and violence than from any other type of human rights abuse. This ranges from female infanticide and the disproportionate malnutrition of girl children, to the multiple forms of coercion, battery, mutilation, sexual assault and murder that large numbers of women face in every region of the world, throughout their lives, simply because they are female.<sup>154</sup>

It is a travesty and a sad reflection of the failings of the international community, and humanity more broadly, that this statement is just as true today as it was 20 years ago.

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**154** Charlotte Bunch and Niamh Reilly, *Demanding Accountability: The Global Campaign and Vienna Tribunal for Women's Human Rights*, Centre for Women's Global Leadership and United Nations Development Fund for Women, New York, 1994, p. 4

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