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Abstract

Key Words: Domestic violence, women, State responsibility, Human rights, Norway

Domestic violence against women is a human rights violation that affects women all over the world regardless of their color, nationality, or age. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and related international and regional legal and policy instruments have clarified the obligations on States to prevent, eradicate and punish violence against women. Under these instruments States have concrete and clear obligations to address violence against women, whether committed by state agents or by non-state actors. However, States around the world are failing to meet the requirements of the international legal and policy framework. In Norway, the issue of domestic violence against women is a prevalent problem too, and to combat such crime is the forefront of the government concern. The Soria Moria Declaration of 2005 maintains that government will improve efforts to fight against domestic violence. This thesis is based on domestic violence against women from the human rights perspective. It examines the legal nature of violence against women and its implication for the State responsibility, and the circumstances in which the State can be held responsible for the breach of due diligence norms. However, Norway is not the main centre of the analysis for the thesis but it is just used as an example in order to concretize the problems associated with the implementation of the States obligation embedded in the CEDAW and other human rights instruments. Despite the adoption of the international standard norms regarding violence against women by the Norwegian government, violence against women remains a complicated and debilitating issue in the country. Finally, legal arrangements are not enough; it is necessary to focus on other preventative measures aiming to combat traditional ideologies used to justify gender-based violence. Specified professional groups, such as the police and the judiciary, should be given appropriate trainings in order to learn how to address domestic violence cases in a gender-sensitive manner. The Norwegian government should review the Crisis Centre Act (2010) and provide enough financial support for current programs/centers/shelters focused on the prevention and protection of women to ensure accessibility and effectiveness. By fulfilling its obligation regarding a protection of violence against women, Norway can both improve the lives of Norwegian women and provide an example for the rest of the world.
### Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAT</td>
<td>Convention Against Torture</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination Against Women</td>
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<td>DEVAW</td>
<td>Declaration on the Elimination of Violence Against Women</td>
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<tr>
<td>ECHR</td>
<td>European Convention of Human Rights</td>
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<tr>
<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<tr>
<td>FOKUS</td>
<td>Forum for Kvinner og Utviklingsspørsmål</td>
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<tr>
<td>HRC</td>
<td>Human Rights Committee</td>
</tr>
<tr>
<td>IACHR</td>
<td>Inter-American Court of Human Rights</td>
</tr>
<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social, and Cultural Rights</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>JURK</td>
<td>Juridisk Rådgivning for Kvinner</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
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<tr>
<td>OECD</td>
<td>Organization for Economic Co-operation and Development</td>
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<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commissioner for Refugees</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNCESCR</td>
<td>United Nations Committee on Economic, Social, and Cultural Rights</td>
</tr>
<tr>
<td>WHO</td>
<td>World Health Organization</td>
</tr>
</tbody>
</table>
## Table of contents

1.0 Introduction................................................................................................................................. 7

1.1 Background of the problem ........................................................................................................ 8

1.1.1 General situation....................................................................................................................... 8

1.1.2 The scope of the problem of violence against women in Norway......................................... 9

1.2 Statement of the problem............................................................................................................ 11

1.2.1 Main objective of the study...................................................................................................... 12

1.2.2 Research questions................................................................................................................... 12

1.2.3 Method and sources of law...................................................................................................... 13

1.2.5 Limitation.................................................................................................................................. 14

1.3 A brief outline of this thesis ........................................................................................................ 14

2.0 Meaning, causes and consequences of domestic violence......................................................... 16

2.1 Meaning of domestic violence ..................................................................................................... 16

2.2 Causes and consequences of domestic violence against women.............................................. 18

2.2.1 Causes of domestic violence .................................................................................................. 18

2.2.2 Consequences of domestic violence against women............................................................ 20

2.2.2.1 Domestic violence arbitrarily puts women’s rights to life at risk and denies women the right to liberty and security of person. ................................................................. 20

2.2.2.2 Domestic violence abrogates women’s rights to be free from torture ............................... 20

2.2.2.3 Domestic violence inhibits women from exercising their right to enjoy the best attainable state of physical and mental health................................................................. 21

2.2.2.4 Domestic violence violates women’s right to non-discrimination and equality............. 22

2.3 Recognition of domestic violence as an international problem ............................................... 22

2.4 Domestic violence as a form of gender-based discrimination .................................................. 24

3.0 International legal standards on violence against women and due diligence standard ............. 28

3.1 The Universal Declaration of Human Right (UDHR) ............................................................... 28

3.2 International Convention on Civil and Political Rights (ICCPR)............................................. 29

3.3 International Covenant on Economic, Social and Cultural Rights (ICESCR).......................... 29

3.4 The instruments on women’s rights............................................................................................. 32
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.4.1 Convention on the Elimination of Violence Against Women (CEDAW)</td>
<td>32</td>
</tr>
<tr>
<td>3.4.2 Declaration on the Elimination of Violence Against Women (DEVAW)</td>
<td>33</td>
</tr>
<tr>
<td>3.4.3 Council of Europe convention on preventing and combating violence against women and domestic violence</td>
<td>35</td>
</tr>
<tr>
<td>3.5 Due diligence standards and violence against women</td>
<td>36</td>
</tr>
<tr>
<td>3.5.1 Meaning of due diligence standards</td>
<td>36</td>
</tr>
<tr>
<td>3.5.2 Introducing due diligence standard</td>
<td>36</td>
</tr>
<tr>
<td>3.5.3 Failure of the State to act with due diligence regarding domestic violence against women</td>
<td>38</td>
</tr>
<tr>
<td>3.5.3.1 Maria Fernandes v Brazilian Government</td>
<td>38</td>
</tr>
<tr>
<td>3.5.3.2 A.T. v. Hungary</td>
<td>39</td>
</tr>
<tr>
<td>3.5.3.3 F. Yildirim v Austria</td>
<td>41</td>
</tr>
<tr>
<td>4.0 Overview of the Norwegian government response to combat violence against women including domestic violence</td>
<td>43</td>
</tr>
<tr>
<td>4.1 Governmental and legislative measures</td>
<td>43</td>
</tr>
<tr>
<td>4.1.1 National Action Plan to combat violence against women and domestic violence</td>
<td>43</td>
</tr>
<tr>
<td>4.1.2 Shelters</td>
<td>44</td>
</tr>
<tr>
<td>4.1.3 Family violence coordinators</td>
<td>46</td>
</tr>
<tr>
<td>4.1.4 Restraining orders</td>
<td>46</td>
</tr>
<tr>
<td>4.1.5 Legislative amendments</td>
<td>47</td>
</tr>
<tr>
<td>4.1.6 Mobile violence alarms</td>
<td>48</td>
</tr>
<tr>
<td>4.2 Norway's international obligations and responsibility related to violence against women and the analysis of measures undertaken</td>
<td>49</td>
</tr>
<tr>
<td>5.0 Recommendations and conclusion</td>
<td>58</td>
</tr>
<tr>
<td>5.1 Recommendation</td>
<td>58</td>
</tr>
<tr>
<td>5.2 Conclusion</td>
<td>59</td>
</tr>
<tr>
<td>6.0 References</td>
<td>61</td>
</tr>
</tbody>
</table>
1.0 Introduction
Domestic violence against women is a serious problem and often social problem with major consequences for those affected the family and communities. It causes untold misery, cutting short lives and leaving countless women living in pain and fear in every country in the world. Even though domestic violence represents only one of the numerous forms of violence to which millions of women are subjected, it is perhaps one of the most widespread forms of violence. However, despite the widespread nature of the problem it has been considered a private matter best dealt within the home, not an issue of public policy. Domestic violence against women has long been a matter of low priority in human rights domain; it was regarded as a private matter rather than human rights concern. Further, States were reluctant to combat formal violence that originates from specific cultures, customs, religions and traditions. Nowadays, violence against women is widely recognized as violation of human rights. Qualifying violence by non state actors including violence occurring in the private domain as human rights issue it means that all forms of domestic violence against women are matter of ‘legitimate concern’ of the international community and that state has obligations under international human rights law to combat this phenomena. Numerous rights are implicated by violence against women, which as United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) has explained in its General Recommendation No.


5 World Conference on Human Rights; Viena Declaration and programme of Action, para.4, 1993, (Brownlie Ian, 2006 p.140)
on Violence Against Women, 1992, is manifestation of gender discrimination that impairs and nullifies the enjoyment by women of human rights and fundamental freedoms.

By hampering the full involvement and participation of women, countries commitment to gender equality lies in its actions to eliminate violence against women in all forms and in all areas of life. For the State to bear responsibility for failing to exercise due diligence with respect to violence against women, it is not necessary to attribute the act of violence directly to the state. Instead, the human rights violation lies in the failure of the state to fulfill its obligation to take appropriate measures with respect to such violence. “States may be held responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence and for providing compensation”. The United Nation General Assembly Declaration on the Elimination of Violence Against Women (GA Declaration), 1993 also argues states to “exercise due diligence to prevent, investigate and, in accordance with national legislation punish acts of violence against women whether those acts are perpetuated by the states or private persons”.

1.1 Background of the problem

1.1.1 General situation

Domestic violence against women is a serious problem worldwide. It continues to be a global issue of pandemic proportions, which has an impact in all societies, regardless of culture, class, education income, ethnicity and age. Such violence is characterized by the use of physical, psychological, or sexual force by the dominant domestic partner (recognizing the overwhelming probability that this partner is male in a heterosexual domestic relationship) for

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9 United Nations Department of Public Information DPI/2035/D-mai 2000, supra note 3
the purpose of intimidating, manipulating, or coercing the subordinate partner (who will most likely be female in a heterosexual relationship). No society can claim to be free of such violence; the only variation is the patterns and trends that exist in countries and regions. United Nations studies report that the most common form of violence experienced by women around the world is physical violence inflicted by an intimate partner. As a global average, at least 1 in 3 women is beaten, coerced into sex, or otherwise abused by an intimate partner in the course of her lifetime. Studies also revealed that women battering or domestic assault is the most common form of domestic violence worldwide.

On 7th April 2011 the Committee of Ministers of the Council of Europe adopted a landmark new Convention on Preventing and Combating Violence Against Women and domestic violence. This Convention is the first legally binding instrument in the world creating a comprehensive legal framework to prevent violence, to protect victims and to end with impunity of perpetrators. It defines and criminalizes various forms of violence against women including forced marriage, female genital mutilation stalking, physical and psychological violence and sexual violence. Violence against women is defined in Article 3 of Convention.

1.1.2 The scope of the problem of violence against women in Norway

Like many countries, domestic violence against women is a prevalent problem in Norway where the issue of combating the matter is the forefront of the government concern. There is a political consensus in Norway that violence against women is not a private matter, and that the public authorities are responsible for preventing and helping to avert this type of violence. The Soria Moria Declaration of 2005 maintains that government will improve

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12 David Levinson, Family Violence in Cross Cultural Perspective (1989)


14 Ibid

15 See NOU 2003 31:61 Supra note 1.
efforts to fight against violence in close relationship. The efforts of public authorities are based on their acknowledgement of this responsibility. In recent years, the Norwegian authority has implemented large number of measures to combat violence against women including domestic violence. Such measures include among others legislative amendments, different Action Plans, awareness raising and many more. Measures that are channeled through Action Plan include family violence coordinators, crisis centre act and others, which are mentioned and discussed later in this thesis. In addition to that Norway has ratified almost all international conventions and agreements on violence against women and gender-based violence including the Convention on Elimination of Violence Against Women (CEDAW) and its optional protocol.

Despite of all these measures taken by the Norwegian government, still the issue of domestic violence against women is a problem in the country. According to the NGO shadow report to CEDAW 2011, Norway tops European statistics for homicide committed in close-relationships. A number of studies clearly indicate that, domestic violence against women in Norway is far more widespread than initially understood and also far more dangerous than primarily assumed. In 2011, there had been 2604 reported cases for domestic violence. 4 women had been murdered by their partners in 2011, 6 in 2010 and 6 in 2009. Between 2000 and April 2011, 93 women were killed by their partners-former partners or boyfriends. This constitutes between 20 and 23 percent of the murders committed every year. Moreover, according to CEDAW Committee in its consideration of 8th Periodic Report for Norway, the shockingly incidence of femicide in Norway is the reflection of inequality and

16 The Soria Moria Declaration 2005 is the political platform for the Norwegian government
17 Supplementary Report to the 8th Norwegian Report to the CEDAW Committee from the Equality and Anti-Discrimination Ombund
18 See also (CEDAW 8th Report to Norway, see comments by Anne L on the Vesterålen daily newspaper on 2th Feb. 2012)
20 Ibid
21 Ibid
22 Ibid
discrimination in the country. It is an indication that the society has not yet achieved gender equality.

1.2 Statement of the problem
A series of international instruments establishes that domestic violence and other forms of violence against women are not always a private matter, but may entail state responsibility under international law. Under these international laws, States have the duty to take positive action to address violence against women. This duty arises from treaty provisions under which States undertake to ‘ensure’ or to ‘secure’ to all within their territory or jurisdiction the rights in the treaties. The concept of state responsibility has now developed to recognize that States also have the duty to take preventive and punitive steps where rights violations by private actors occur.

Norwegian government has so far done much to combat violence against women including domestic violence. However, the CEDAW report raised alarm that there is no overall evaluation which has been carried out to evaluate the effectiveness of the measures implemented in the country. This may raise a doubt if Norway is implementing in full the international standards on violence against women. In addition to that, there is no specific legislation concerning domestic violence in Norway, instead, the general provision of the penal code is applied in these cases. It is argued that comprehensive domestic violence legislation that specifically prohibits domestic violence is by far the most effective legal mechanism in addressing domestic violence.

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25 Domestic violence against women and girls, supra note 7, p.10

26 CEDAW Committee 8th Periodic Report for Norway, supra note 23


In its concluding comments on the 7th Periodic Report for Norway, the CEDAW Committee has argues State party to adopt a comprehensive measures to protect women against all forms of violence in accordance with its general recommendation No. 19, and to reconsider its decision not to enact a specific law on domestic violence.\(^29\)

In accordance with its general recommendation No. 19 the Committee argues the State party to ensure that comprehensive measures are in place to address all forms of violence against women, including domestic violence … It also calls upon the State party to reconsider its intended position not to enact a specific law on domestic violence.\(^30\)

1.2.1 Main objective of the study
This study aims to discuss State’s responsibility for preventing/protecting and addressing violence against women including domestic violence as its obligation under international law. It examines the legal nature of violence against women and its implication for the State responsibility, and the circumstances in which the State can be held responsible for the breach of the due diligence norms. It aims to assess Norwegian government’s response to violence against women including domestic violence, and measures undertaken, its achievements and challenges. However, Norway is not the main centre of the analysis for the thesis but it is just used as an example in order to concretize the problems associated with the implementation of the State obligation embedded in the CEDAW and related instruments.

1.2.2 Research questions
This study is guided by two overall research questions. 1) What is the obligation of the State to protect women against domestic violence under the international law? 2) In which circumstances a State can be held responsible for the breach of the due diligence norms?


\(^{30}\)ibid
1.2.3 Method and sources of law

This study draws from existing research and knowledge at national, regional and global levels. It is based on domestic violence against women from the human rights perspective and it is based on a combination of legal and empirical sources. Different international human rights instruments are used in order to determine the state responsibility to protect women against domestic violence.

To interpret various conventions texts, the author applied general recommendations and comments from Committee on the Elimination of Discrimination Against Women (CEDAW Committee) and other general recommendations and comments from other human rights committees, the reports of the Special Rapporteur on violence against women are also used.

Individual communications from the CEDAW Committee and Inter-American Commission are also used in this thesis. These cases held national governments responsible for failing to exercise due diligence to adequately protect individual women from domestic violence. They are key sources of how these bodies have interpreted due diligence. They provide an example of the State failing to act diligently regarding domestic violence against women in both laws and practice.

Various public documents from United Nations (UN) websites and Norwegian government documents (regjeringen.no) are used in the thesis. The ratification of CEDAW and its Optional Protocol is addressed in order to give some concreteness of the States effort regarding the compatibility of international norms to combat violence against women. In order to assess measures undertaken by the Norwegian government concerning the protection of women from domestic violence, different reports and concluding comments from CEDAW Committee over years are used (3rd through 8th). These comments contain the criticisms of the measures taken by the government regarding violence against women, achievements and valuable recommendations. Report of the research conducted by a non-governmental organization known as Legal Advice for Women (Juridisk Rådgivning for Kvinner (JURK)), (2008), is also used in this thesis. This research was conducted in order to assess the effectiveness of the measures initiated by the Norwegian government in its effort to combat violence against women. These documents constitute a fairly large material and the challenge has been to extract relevant and interesting statements for further interpretation and discussion.
In the last decade, several studies of the scope of domestic violence against women have been undertaken in Norwegian society. Most of the studies conducted in Norway have dealt mainly with domestic violence against women with migrant background.

A recent book called “Det skal merkes at de gråter,” written by Amal Aden (2011), which also discussed the issue of domestic violence, focuses only on the domestic violence against immigrant women with Somali background.

In recent years the author has worked at Oslo Crisis Center as well as at JURK where she had direct contact with women victims of domestic violence. The experience from these jobs has greatly influenced my choice of the topic and it has given the author prior understanding and knowledge of the field she researched within. The experience obtained from these jobs is applied while writing this thesis.

Sources that have been used are reliable and accessible from public and private sources such JURK, Oslo and Vesterålen Crisis Centers, Equality and Discrimination Ombund, Norwegian Official Reports, different books, journals, articles, newspapers and websites.

1.2.5 Limitation
This thesis limits its scope to domestic violence perpetuated against women because it’s overwhelmingly initiated by men and inflicted upon women. This does not mean that men are not subjected to domestic violence but women are in reality more affected than men. As mentioned earlier on, Norway is not the main centre of analysis for the thesis but it is just used as an example in order to concretize all the theoretical explanations.

1.3 A brief outline of this thesis
This thesis is divided into five chapters. Chapter one has provided the background of the problem which includes the situation about domestic violence against women in Norway and globally, statement of the problem, main objective of this study, methods used to collect data and limitation of the thesis. This chapter briefly introduces how the Norwegian government has responded to the problem too.

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31 See also Bo Vatner et, al., (2010), Tone Skjelbolstas (2005), Anja Bredal - ISF-Norway (2007).

The goal of chapter two is to give detailed definition of domestic violence against women in order to determine the scope of acts that might trigger the state responsibility. Defining domestic violence is very important since many women ignore that they are subjected to domestic violence because of their lack of knowledge regarding the matter. Therefore, meaning, causes and consequences of domestic violence are described in chapter two. In addition to that domestic violence is interpreted as a form of gender-based discrimination in order to prove that it is the state’s duty to protect women from domestic violence or to take measures aiming to eradicate domestic violence. The third chapter describes human rights instruments in order to determine different legal provisions which constitute the grounds for advocating against domestic violence and engaging state responsibility. The meaning of due diligence standards and its application is also broadly analyzed in chapter three. Different measures taken by the Norwegian government to combat domestic violence against women as its obligation under international law are analyzed in chapter four. Moreover its success and failure is also highlighted. The paper concludes with summary and directions are given for future research.
2.0 Meaning, causes and consequences of domestic violence

2.1 Meaning of domestic violence

The explanations below demonstrate that domestic violence has quite broad meaning. The broad interpretation of domestic violence influences the extent of state responsibility. The broader the definition of domestic violence is the more extensive state responsibility is.

For the purpose of this thesis the definition of violence against women used in the Declaration on Elimination of Violence Against Women (DEVAW)\textsuperscript{33}, which deals exclusively with the subject is used. According to the definition enshrined in the declaration “violence against women” means;

\begin{quote}
…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 of liberty whether in public or private life.\textsuperscript{34}
\end{quote}

It is the first international human rights instrument that explicitly and directly addressed the issue of violence against women at large. In the light of this provision it can be stated that violence against women becomes “domestic” when it occur in the private sphere between individual who are related through intimacy blood or law\textsuperscript{35}. Knowing that, domestic violence can be defined more precisely as the physical, sexual, and psychological abuses perpetrated by male partners against their female companions in the privacy of the home\textsuperscript{36}.

As suggested in the definitions given above, domestic violence does not have to be physical or sexual, but it can also take the form of an emotional abuse such as insulting, humiliating, name calling or threatening the victim or her loved ones with violence\textsuperscript{37}. Economic abuse is

\begin{flushright}
\textsuperscript{33} UN General Assembly, Declaration on the Elimination of Violence Against Women (DEVAW), supra note 2
\textsuperscript{34} Convention Against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment, 1984, refered by Brownlie Ian. Basic Huna Documents on Human Rights 5th ED. , 2006. p.188
\textsuperscript{35} Pagolione (2006) p. 121
\textsuperscript{36} Ibid
\end{flushright}
also a form of domestic violence. Preventing her from working, withholding money for household expenses or depriving her of her income constitutes examples of economic violence acts.

Article 2(a) DEVAW actually enumerates a non-exhaustive list of domestic violence acts. According to the said provision, violence against women shall be understood to encompass, but not be limited to acts of physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.\(^38\)

In general, because United Nations declarations are not signed and upheld by nations, they have no legally binding authority.\(^39\) Consequently, States have no tangible outside pressure to conform to the terms of DEVAW. Additionally, at some points, DEVAW suffers from imprecise drafting, which could lead to confusion among nations who elect to comply.\(^40\) For example, DEVAW limits State obligations in eradicating violence against women by deferring to national legislation.\(^41\) In technical terms, this qualification may permit nations to define their level of compliance with DEVAW by establishing individual legislation\(^42\) and could create significant dangers of inadequate protection of women.\(^43\) Alternatively, this language could be nothing more than a procedural regulation.\(^44\)

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\(^38\) UN General Assembly, Declaration on the Elimination of Violence Against Women (DEVAW), supra note 2.


\(^40\) Elizabeth M. Misiaveg, Important Steps and Instructive Models in the Fight to Eliminate Violence Against Women, 52 WASH. & LEE L. REV. 1109, 1118 (1995). 1133-34

\(^41\) See ibid. p. 1122.

\(^42\) See ibid. p. 1125

\(^43\) See ibid p. 1125-26.

\(^44\) See ibid. at 1134-39.
2.2 Causes and consequences of domestic violence against women

2.2.1 Causes of domestic violence

There is no one single factor to account for violence perpetrated against women. Increasingly, research has focused on the inter-relatedness of various factors that should improve our understanding of the problem within different cultural contexts. Several complex and interconnected institutionalized social and cultural factors have kept women particularly vulnerable to the violence directed at them, all of them manifestations of historically unequal power relations between men and women.45

Factors contributing to these unequal power relations include: socioeconomic forces, the family institution where power relations are enforced, fear of and control over female sexuality, belief in the inherent superiority of males, and legislation and cultural sanctions that have traditionally denied women and children an independent legal and social status.46 Lack of economic resources underpins women’s vulnerability to violence and their difficulty in extricating themselves from a violent relationship. The link between violence and lack of economic resources and dependence is circular. On the one hand, the threat and fear of violence keeps women from seeking employment, or, at best, compels them to accept low-paid, home-based exploitative labor. And on the other, without economic independence, women have no power to escape from an abusive relationship.47

The reverse of this argument also holds true in some countries; that is, women’s increasing economic activity and independence is viewed as a threat which leads to increased male violence.48 This is particularly true when the male partner is unemployed, and feels his power undermined in the household.

Cultural ideologies – both in industrialized and developing countries – provide ‘legitimacy’ for violence against women in certain circumstances. Religious and historical traditions in the past have sanctioned the chastising and beating of wives. The physical punishment of wives

45 Domestic Violence Against Women and Girls No. 6 - J u n e 2 0 0 0, supra note 7
48 Ibid
has been particularly sanctioned under the notion of entitlement and ownership of women. Male control of family wealth inevitably places decision-making authority in male hands, leading to male dominance and proprietary rights over women and girls.

The concept of ownership, in turn, legitimizes control over women’s sexuality, which in many law codes has been deemed essential to ensure patrilineal inheritance. Women’s sexuality is also tied to the concept of family honor in many societies. Traditional norms in these societies allow the killing of ‘errant’ daughters, sisters and wives suspected of defiling the honor of the family by indulging in forbidden sex, or marrying and divorcing without the consent of the family. By the same logic, the honor of a rival ethnic group or society can be defiled by acts of sexual violence against its women.

Lack of legal protection, particularly within the sanctity of the home, is a strong factor in perpetuating violence against women. Until recently, the public/private distinction that has ruled most legal systems has been a major obstacle to women’s rights. Increasingly, however, States are seen as responsible for protecting the rights of women even in connection with offences committed within the home. In many countries violence against women is exacerbated by legislation, law enforcement and judicial systems that do not recognize domestic violence as a crime. The challenge is to end impunity for the perpetrators as one means of preventing future abuse.

Investigations by Human Rights Watch have found that in cases of domestic violence, law enforcement officials frequently reinforce the batterers’ attempts to control and demean their victims. Even though several countries now have laws that condemn domestic violence, “when committed against a woman in an intimate relationship, these attacks are more often tolerated as the norm than prosecuted as laws.... In many places, those who commit domestic violence are prosecuted less vigorously and punished more leniently than perpetrators of similarly violent crimes against strangers.”

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2.2.2 Consequences of domestic violence against women

2.2.2.1 Domestic violence arbitrarily puts women’s rights to life at risk and denies women the right to liberty and security of person.

As recognized by CEDAW General Recommendation 19 domestic violence against women nullifies “the enjoyment by women of human rights”, including “the right to life” the right to life is the most accepted and basic human rights and is secured by numerous human rights treaties and other highly persuasive expressions of international consensus. In its most virulent forms, domestic violence can arbitrarily deprive a victim her right to life through such violent practice for example spousal murder. Furthermore, the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) explicitly recognize and guarantee a woman rights to liberty and security of person. Domestic violence deprives women’s of these rights by creating a perpetual state of insecurity and subjugation. Because domestic violence often presents itself in repeated pattern, women who are subjected to domestic abuse face a constant threat of physical assault or emotional or psychological abuse. This constant threat of harm constrains women’s choices and actions as they must constantly monitor and make provisions for their safety. If the State permits this state of perpetual insecurity, this means that it violates its duty to ensure enjoyment of the right to liberty and security of the person under international law.

2.2.2.2 Domestic violence abrogates women’s rights to be free from torture

Domestic violence violates women’s right to be free from torture; it inflicts suffering on women because it’s committed with acquiescence of the state. A person’s right to be free from torture is one of the most embedded principles of international law. The torture Convention defines torture as;

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50 Convention on the Elimination of All Forms of Discrimination against Women, Supra note, 6

51 Ibid


Any act by which severe pain or suffering, whether physical or mental is inflicted on a person for … any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.\textsuperscript{54}

When men engage in violence and batter their wife or girlfriends to demonstrate control over them, they intentionally abuse those women and these actions are based upon discriminatory view that a woman is inferior to man. If for example the State has no effective mechanism that would enable public officials to prevent or combat domestic violence against women, it means that, State is effectively acquiescing in the perpetration of these acts. All States must end this acquiescence and systematically protect women’s right to freedom from torture, and cruel, inhuman, or degrading treatment.

\textbf{2.2.2.3 Domestic violence inhibits women from exercising their right to enjoy the best attainable state of physical and mental health}

By inflicting serious physical injuries and psychological trauma, domestic violence against women denies women’s right to enjoy the best attainable state of physical and mental health as it’s guaranteed under the International Convention on Economic, Social and Cultural Rights (ICESCR).\textsuperscript{55} Domestic violence inflicts physical wounds such as bruises, broken bones, bleeding, miscarriage, and death, as well as psychological consequences such as fear, depression post-traumatic stress disorders and suicidal tendencies.

The international community has explicitly recognized that violence against women, including domestic violence, puts women’s health and lives at risk,\textsuperscript{56} and has encouraged States to take serious action, for example, by directing the States to work to ensure that women subjected to violence have specialized assistance, including health services\textsuperscript{57}, and by

\begin{itemize}
\item \textsuperscript{54} Convention Against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment, 1984, refered by Brownlie Ian. Basic Huna Documents on Human Rights 5\textsuperscript{th} ED., 2006. p.405
\item \textsuperscript{55} International Covenant on Economic, Social and Cultural Rights, 1966, refered by Ian Brownlie, 2006, p. 348
\item \textsuperscript{56} See CEDAW General Recommendation No.19, supra note 6, paras. 19-20
\item \textsuperscript{57} DEVAW supra note 2, art. 4
\end{itemize}
providing support services for victims, including specially-trained health workers and counseling.\textsuperscript{58} States, and Norway with no exception, must take actions to ensure that domestic violence does not deprive women of the ability to enjoy the best attainable state of health.

2.2.2.4 Domestic violence violates women’s right to non-discrimination and equality

Domestic violence against women stems from traditional norms mandating women’s subordination and disproportionately affects women. A state that does not seek to eliminate domestic violence against women is violating women’s right to non-discrimination. The United Nations has recognized that violence against women is simultaneously “one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”, \textsuperscript{59} and “a manifestation of the historical and equal power relation between men and women” \textsuperscript{60}

Consequently, to allow systemic domestic violence is to give different treatment to different persons. This constitutes unlawful discrimination under article 1 of CEDAW. “The definition of discrimination under CEDAW includes gender based violence, that is, violence that is directed against a woman because she is a woman.” \textsuperscript{61} Domestic violence clearly fits within this definition.

Moreover, the international community has expressed its consensus that “acts or threats of violence, whether occurring within the home or in the community or perpetrated or condoned by the state, instill fear and insecurity in women’s life and her obstacles to the achievement ….” \textsuperscript{62} Domestic violence prevents women from realizing equal standing in the community.

2.3 Recognition of domestic violence as an international problem

The evolving concept of state responsibility for individual act and the subsequent recognition of domestic violence as violation of human right is a recent advance in international law. In

\textsuperscript{58} Ibid and see also CEDAW General Recommendation 19, supra note 6, para. 24.


\textsuperscript{60} Ibid., Art. 118

\textsuperscript{61} CEDAW General Recommendation 19, supra note 6. Para., 6

\textsuperscript{62} Beijing Declaration supra note 59, art. 117
1978, the Convention on the Elimination of Discrimination Against Women (CEDAW) was adopted by the United Nations General Assembly and heralded as the “international bill of rights for women,” containing provisions meant to end discrimination toward women.\(^{63}\)

Although it was a landmark treaty, CEDAW did not explicitly address the issue of violence against women.\(^{64}\) It was not until several years later that international bodies began to acknowledge the connection between violence against women and discrimination.

In the mid-1980s, domestic violence grew more prominent as an issue of international concern. Statements and resolutions on violence in the family were issued by the U.N. Economic and Social Council, the U.N. Expert Group Meeting on Violence in the Family held in 1986. These documents drew attention to the international character of the problem, asked states to develop Action Plans to address domestic violence, and led to further studies.\(^{65}\)

In 1989, the U.N. released a report on Violence Against Women in the Family which argued that domestic violence is not random, but “associated with inequality between women and men.”\(^{66}\) An additional General Assembly resolution called for nations to work together to develop strategies to prevent violence and protect victims. In 1992, thirteen years after CEDAW’s adoption, the Committee on the Elimination of Discrimination Against Women “CEDAW Committee” incorporated violence against women into its reading of CEDAW by adopting General Recommendation 19.\(^{67}\) This recommendation established a robust definition of violence against women and mandated that “full implementation of the Convention required states to take positive measures to eliminate all forms of violence against women”.

Significantly, the document also identified the “Due Diligence” for determining whether states have fulfilled the objectives of the recommendation. This standard, to the international


\(^{64}\) ibid.

\(^{65}\) Bonita Meyersfeld, Domestic Violence and International Law, 2010


\(^{67}\) CEDAW, Supra note 6
law, suggested that CEDAW’s member states had particular obligations to ensure the elimination of violence against women.

2.4 Domestic violence as a form of gender-based discrimination

Some questions need to be answered before going into the details of the analysis: why should domestic violence be classified as a form of discrimination? What is the relevance of such an assessment? What would be the benefit? Violence against women can only be eliminated if the problem is treated not in isolation, but as an issue that is part and parcel of the overall equality problem between men and women.\(^{68}\) Taken alone, domestic violence does not receive the necessary attention and concern from many States, the fact of classifying it as a form of discrimination gives value to the importance of treating the matter and stresses the role of the State with regard to its responsibility to undertake positive steps.

Article 1 CEDAW makes no reference to gender-based violence when defining the term ‘discrimination against women’. According to the said provision, discrimination against women means;

\[
\text{any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.}^{69}\]

In other words, gender-based discrimination means any difference in treatment based on sex that disadvantages women by preventing them from exercising their human rights and fundamental freedoms.\(^{70}\)

As the Convention on the Rights of the Child (RC) does not specifically include violence in its definition of discrimination, women are left at the mercy of non-binding documents, such as:

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\(^{69}\) See Convention on the Elimination of All Forms of Discrimination Against Women, [supra note 6](#)

as the DEVAW or the Recommendation No.19 from the CEDAW Committee for the recognition of gender-based violence as a form of discrimination. These documents establish that violence is used as a way of sustaining gender inequality.

The DEVAW sees violence as being a historically rooted issue linked to gender inequality. It is provided in its Preamble that;

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violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.
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On the other hand, General Recommendation No.19 states that the definition of discrimination, as expressed in Article 1 CEDAW, includes gender-based violence. It also provides that “gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.” This is also stressed in the 2002 report of the Parliamentary Assembly of the Council of Europe which states that “the meaning of this violence is clear: it is an attempt to maintain the unequal relationship between men and women and to perpetuate the subordination of women.” Concretely, this seems to suggest that a woman subjected to violence cannot enjoy her fundamental rights. This is also emphasized in paragraph 11 of Recommendation No.19, which states that gender-based violence deprives women from “the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms” and that it maintains them in

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71 51 Committee on the Elimination of Discrimination Against Women, Supra note 6, para.7.

72 DEVAW supra note 2

73 CEDAW General Recommendation No.19, Supra note 6 para. 6.

74 Ibid. para. 1.

subordinate roles and contributes to the low level of education, skills, work opportunities and political participation. The opposite is also true: it is because women do not have access to their fundamental rights and freedoms on an equal basis with men that they are subject to discrimination. This is a vicious circle.

Here is a concrete example: a woman beaten by her husband who forbids her from working. Because she is subject to domestic violence, she cannot enjoy her right to work. But the opposite is also true: because she is not working, she does not have her economic independence, and therefore she keeps staying home under the same roof as her husband who physically abuses her.

While it is true that some women subject to domestic violence have successful professional careers, constant violence tends to undermine their capacity to function effectively and degrades their self-esteem. Generally, women cannot work efficiently and be creative “when they are burdened with the physical and psychological scars of violence.”

In such a context, discrimination appears to be both the origin and the consequence of the problem of domestic violence. Additionally, domestic violence appears to be a form of discrimination in itself because it denies women equality with men in terms of control over their own body and their physical, psychological and sexual well-being.

A few criticisms can be directed at the Declaration and the Recommendation No.19. First of all as non-binding documents, their purpose is to offer guidance to State Parties and elaborate on issues that have not been mentioned or sufficiently explained in the Convention. In this regard, domestic violence could have been included in an additional protocol to the CEDAW which would have had a binding effect.

Second, the recommendation should have started by stating clearly and explicitly that domestic violence is a form of human rights abuse before exploring with the question of

76 CEDAW General Recommendation No.19, Supra note 6, p. 11.
77 R. Copelon, supra note 32, p. 339.
78 Ibid., p. 338.
whether or not it forms discrimination. There is a need to express clearly and explicitly that domestic violence is a form of human rights violation.

Finally, Recommendation No. 19 states in its paragraph 4 that the Committee concluded that not all the reports of State parties adequately reflected the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms. The Committee should question the Convention before questioning the State reports.

In the next chapter we present the international legal standards on violence against women and explicitly show how these standards are relevant to this thesis.

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3.0 International legal standards on violence against women and due diligence standard

In recent times, the norms and standards of international law have developed a concern for “women” question. This is more so in the field of international human rights as the problems associated with violence against women have gain recognition by international community. Many international legal instruments dealing with human rights include the protection of women from violence in their provision.

Depending on the binding character of the legal instrument, violations of these provisions can have consequences regarding State responsibility. Even if there are no concrete violations, signatory states are supposed to incorporate the international norms.

3.1 The Universal Declaration of Human Right (UDHR)

The Universal Declaration of Human Rights (UDHR) in Article 1 states that all human being are born to be free and equal dignity and rights. Article 2 provides that everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Under Article 5, it is provided that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. The non-discrimination clause taken together with Articles 3 and 5 means that any form of violence against women which can be construed as threat to her life, liberty or serenity of person or which constitutes torture or cruel, inhuman or degrading treatment is not in keeping with the spirit and purport UDHR and is therefore a violation of international obligation of member states.

Being a Declaration, the UDHR is initially only recommendatory and non-binding except the provisions that form a party of customary international law. In fact, other human rights

81 The Universal Declaration of Human Rights, Article 1, refered by, Ian Brownlie, 2006.p.24

82 Ibid p.24

83 Ibid p.25

84 Vesa, 2004, p. 334.
Declaration refer to UDHR the same reasoning goes for International Court of Justice: even though the Court does not refer to it as a Custom it relies on the declaration in its cases.

Though few states voted in favor of Declaration and it was not adopted by consensus, other states have subsequently agreed to it. But some of the rights such as right to life or the right to be free from torture have become firmly established in international law that they are now treated as ‘jus cogens’ norms and they developed into custom. They consequently bind the states party to the Declaration85.

Therefore, it seems that the mentioned legal provisions can constitute a type of binding bases in terms of advocating against domestic violence and enhancing the role of states with respect of its obligations.

3.2 International Convention on Civil and Political Rights (ICCPR)

ICCPR also prohibit violence against women. It has a binding effect upon the states that have signed it86. Article 2 of the ICCPR contains a non-discrimination clause similar to that contained in Article 2 of the UDHR. In addition, Article 26 provides that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as …sex…”

Considering Article 7 of ICCPR87 which prohibits torture, and cruel, inhuman or degrading treatment or punishment, Article 6.1 of the Covenant which protects right to life, and Article 9.1, which protects right to liberty and civility of a person, the Covenant may be construed as covering the issue of domestic violence.

3.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR has also the provisions under which domestic violence can fall in. This is an international instrument which can be used to protect women’s economic, social and cultural rights. The ICESCR may appear to be secondary or subsidiary human rights instrument

85 Rehman, 2003, p. 61.
86 Vesa, supra note 84, p.320
87 Article 7 of ICCPR, refered by Brownlie Ian (2006), p. 361
regarding the protection of women against violence. Therefore, it does not receive attention that it deserves. It is true that ICESCR cannot be directly involved in situation involving violence against women\textsuperscript{88}, but its role in terms of both preventing and remedying domestic violence is crucial. This should not be neglected. There are number of rights that women victims should be able to invoke. One of those rights is the right to housing stated in Article 11.1.

Article 11.1 of ICESCR states that:

\begin{quote}
The State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realization of this. \textsuperscript{89}
\end{quote}

Very often due to the lack of shelters, women subjected to violence have absolutely no where to go. Family members or friends offers accommodation but some of the victims are absolutely alone since their husband or partners isolate them from the rest of the society. In this regard, State is under obligation to protect and to fulfill the right to housing of any individual that might be violated by any other individual or non-state actor.\textsuperscript{90} Therefore, women victim of domestic violence should be given proper housing. The Committee on Economic, Social and Cultural Rights in its concluding observation to Lithuania in 2004, “urges the State party to ensure the availability and accessibility of crisis centers where victims of domestic violence can find safe lodging and counseling.”\textsuperscript{91} Furthermore the

\textsuperscript{88} Vesa, supra note 108 ,p.324

\textsuperscript{89} Article 11.1 of ICESRC referred by Brownlie Ian, (2006), p. 351


Committee “note the absence of specific regulations on (...) the lack of shelters for women children who are victims of family (...) and the apparent facilities for such victims.92

The right to food Article 11 may also be invoked, since battered women sometimes do not eat for several days when they are subjected to acts of violence.

The right to health is another right that may be invoked in the context of domestic violence.93 The definition of health as human rights is not very clear since there is still confusion and controversy about its meaning.94 In the Preamble to the constitution of World Health Organization (WHO), health is defined as “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.95 General Comment of the CESCR note that this WHO definition was not one adopted in the drafting of Article 12 of ICESCR, but that the reference in Article 12 of ICESCR to the “highest attainable standard of physical and mental health” is not restricted to the right to the health care.96 It further states, “[o]n the contrary, (...) the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a health life, and extend to the underlying determinants of health such as food and nutrition, housing (…)”. Therefore, it can be said that the consequences of domestic violence affects the victims in such a way that, they cannot lead a health life. This also has negative impact on the rights to housing and food. Furthermore, the General Comment contains the whole paragraph in which the Committee relates the rights to health to women and it provides that “[a] major goal should be reducing women’s health risks, particularly […] protecting women from domestic violence.”97 This also reinforces the argument that the right to health constitutes a legal basis for victims. Also, there are others

92 Ibid
93 A. Vesa, Supra note 84, p.324
97 Ibid., para 21.
signs that demonstrate that the right to health for battered women has to be taken in charge by the state.

Regard, even though it is not a binding instrument, the UN Declaration of Basic principles of Justice for Victims of Crime and Abuse of Power (1985) applies to victims of domestic violence regarding the obligations of the state as to the right to health.\(^98\) According to paragraph 12(a), States should provide financial compensation to victims subjected to “sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; […]”.\(^99\) Overall, this picture shows that it is the right to an adequate standard of living\(^100\) of victims that is generally affected.

### 3.4 The instruments on women’s rights

#### 3.4.1 Convention on the Elimination of Violence Against Women (CEDAW)

The most extensive instrument dealing with the rights of women is the Convention on the Elimination of All Form of Discrimination Against Women (CEDAW). It is an international bill of rights for women as it sets out practices regarded to be discriminatory and lists the actions to be taken to remedy this situation. Although CEDAW does not explicitly deal with violence against women except trafficking and prostitution (Article 6)\(^101\), many of anti-discrimination clauses contained in it provide the basis for the protection of women from violence. In addition, the Committee for the Elimination of Discrimination Against Women has made a number of recommendations which address the issue of gender–based violence and provide another source of legal binding material at the international level dealing expressly with the violence against women.

The definition of discrimination in Article 1 of the convention includes gender-based violence. Article 1\(^102\) of CEDAW defines discrimination as “…any distinction, exclusion or

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\(^{99}\) Ibid, para. 12(a)

\(^{100}\) See Article 11 ICESCR.

\(^{101}\) The U.N, supra note 3

\(^{102}\) Article 1 of CEDAW referred by Ian Brownlie and Guy S.Goodwin-Gill, (2006)
restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women,, of human rights and fundamental freedoms in their political, economic social and cultural civil or any other fields”… Gender-based violence is defined as violence against a woman because she is a woman or which affects women disproportionately. It includes physical, mental or sexual harm suffering, threat of such acts, coercion and other deprivation of liberty. The definition of discrimination therefore necessarily includes gender-based violence.

The provisions in CEDAW are not restricted to acts perpetrated by public officials; they also apply when actions are inflicted by private persons. Article 2(e) refers to acts of discrimination against women committed by “…any person, organization or enterprise.103 Recommendation No. 19 also stresses that discrimination under CEDAW, is not confined by or on behalf of government.104

Through CEDAW women’s rights are conceptualized as human rights. Women are given the right to present their individual complaints through CEDAW’s Optional Protocol. The complaints are to be presented to the committee for the violation of their rights under CEDAW.105

3.4.2 Declaration on the Elimination of Violence Against Women (DEVAW)
More direct is the Declaration on Elimination of Violence Against Women (DEVAW) which deals exclusively with violence against women. This is the document that unequivocally articulates standards and principles with regard to violence against women as an item of the agenda of international human rights. A comprehensive document that identifies causes and suggests remedies for the eradication of violence against women, the Declaration is structured in three parts: a preamble, framing the issues o violence against women; the definition of violence against women and breakdown of the manifestation of violence against women; and prescriptions for state actions with regard to violence against women.106 Although it is not

103 CEDAW, supra note 6, Article 2(e)
104 General Recommendation No. 19, Supra note 6, para 9
105 CEDAW, supra note 6 Article 2(e)
legally binding, it sets out international norms which states have recognized as being fundamental in the struggle to eliminate all forms of violence against women.

As mentioned earlier on, violence against women is defined in the Declaration as including but not limited to physical, sexual and psychological violence that occurs in the family.107 Such violence includes battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, and non-spousal violence related exploitation.108 The declaration also points to the prevalence of violence in the general community including rape, sexual abuse, sexual harassment and intimidation at work in educational institutes and elsewhere, trafficking in women and forced prostitution.

In addition to framing the concern of the violence against women in terms of international standards, debates and policies, the Declaration discusses the cause of violence against women, seeing its root in the historically unequal power relations between men and women. Using words such as “domination”, the Declaration clearly accepts the approach that violence against women is not endemic but socially constructed and historically justified. This perspective ensures that it is a practice which the drafters feel can be eliminated with concerted intervention by the international community, states, and civil society actors.109 It also sets out a standard against which state conduct can be judged and evaluated: States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should…exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by State or by private persons.110

As mentioned earlier on, the said Declaration has no binding effect. However, some of the rights enshrined in the Declaration such as the right to life and the right not to be subjected

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107 Ibid
108 Ibid
109 DEVAW, Supra note 2
110 Ibid
from torture, are firmly established in international law and they are party of binding ‘jus cogens’ norms.\textsuperscript{111} Therefore, it might be argued that domestic violence standards start to become party of customary international law which is binding in nature.\textsuperscript{112}

3.4.3 Council of Europe convention on preventing and combating violence against women and domestic violence.

On 7\textsuperscript{th} April 2011 the committee of ministers of the council of Europe adopted a landmark new convention On Preventing and Combating violence against women and domestic violence. This Convention is the first legally binding instrument in the world creating a comprehensive legal framework to prevent violence, to protect victims and to end with impunity of perpetrators.\textsuperscript{113} It defines and criminalizes various forms of violence against women including forced marriage, female genital mutilation stalking, physical and psychological violence and sexual violence.\textsuperscript{114}

Violence against women is defined in Article 3 of Convention.\textsuperscript{115} The purposes of this Convention are:

a) Protect women against all forms of violence, and prevent, prosecute and eliminate violence against women.

b) Contribute to the elimination of all forms of discrimination against women and promote substantive equality between women and men including empowering women.

c) Design comprehensive framework, policies measures for the protection of and assistance to all victims of violence against women and domestic violence.

d) Promote international co-operation with view to eliminate violence against women and domestic violence.

\textsuperscript{111} Rehman, supra note 85

\textsuperscript{112} Vesa, supra note 84, p.338.

\textsuperscript{113} Council of Europe convention on preventing and combating violence against women and domestic violence available at \url{http://www.coe.int/t/dghl/standardsetting/violence/default_en.asp}. Last visited 15\textsuperscript{th} June 2012

\textsuperscript{114} \textit{Ibid}

\textsuperscript{115} \textit{Ibid}
e) Provide support and assistance to organizations and law enforcement agencies to effectively co-operate in order to adopt an integrated approach to eliminate violence against women and domestic violence.

The next section introduces ‘due diligence’ standard to assess state’s response to domestic violence. Cases presented in this chapter held national governments responsible for failing to exercise due diligence to adequately protect individual from domestic violence.

3.5 Due diligence standards and violence against women

The due diligence standard has been very helpful in challenging the misconception that the state can get rid of its responsibilities simply because the perpetrator is the private actor.116

3.5.1 Meaning of due diligence standards

There is no single agreed definition of what constitutes due diligence. To determine just what diligence is due in a given situation depends on context and the particular facts of the situation. Nonetheless, the four categories of action appearing in the human rights instruments are standard; due diligence entails action to prevent, to investigate, punish and provide compensation117. As for more detailed explanation of what action is required, the Beijing Platform for Action and the GA Declaration, article 4 lists a series of judicial, legislative and administrative steps that states should take to eliminate violence against women. However, neither these instruments nor the work of the bodies that have applied the due diligence indicates whether negligence or strict liability is the appropriate measure by which to judge whether a state has met its obligations. For the first time, the Court considered state responsibility for enforced disappearances. Specifically, the case related to the abduction and disappearance of a graduate student, Angel Manfredo Velasquez Rodriquez.

3.5.2 Introducing due diligence standard

The concept of due “due diligence” regarding state responsibility for non-state acts was first developed in Velasquez Rodriquez v Honduras, a case heard by the Inter-American Court of Human Rights (IACtHR) in 1988.118 In this case the IACtHR held it irrelevant whether the human rights violations at issue were perpetrated by state agents or private individuals. The

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116 A. Vesa, Supra note 84, p. 334
117 UN General Assembly resolution 48/104, 20 December 1993
IACtHR found that the state’s failure to prevent Velasquez’s disappearance, and its failure to punish the perpetrators, was a violation of its obligation to `ensure to all persons... the free and full exercise of...rights and freedoms’ under article 1 of the American Convention on Human Rights (ACHR).\textsuperscript{119}

Importantly for the area of violence against women, the IACtHR stated that `[t]he same is true when the state allows private persons to act freely and with impunity to the detriment of the rights recognized in the ACHR.'\textsuperscript{120} Thus, for example, if the state allows men to beat their wives or girlfriends with impunity, the state has failed to meet its due diligence obligation. A more difficult question is not addressed by this approach—how to judge a state when it has taken some measures, such as enacting legislation, which is the sometimes, but not always, enforced.

Expanding on this analysis, the Court found that an illegal act “which violates human rights which is initially not directly imputable to a State...can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the [American Convention on Human Rights].”\textsuperscript{121} In other words, where rights are guaranteed in this case by the American Convention on Human Rights—the state is obligated to exercise “due diligence” to ensure their fulfillment.\textsuperscript{122} As a consequence of this duty, the “States must prevent, investigate and punish any violation” of rights.\textsuperscript{123} The existence of a legal system is not enough; the government must also “conduct itself so as to effectively ensure” the enjoyment of rights.\textsuperscript{124} This language and legal framework provided the foundation for the due diligence standard, which spread beyond the Inter-American system and is now applied to non-state acts of domestic violence.


\textsuperscript{120} Ibid


\textsuperscript{122} Ibid

\textsuperscript{123} Rodriguez, supra note 118, p. 143

\textsuperscript{124} Beijing Declaration and Platform for Action, supra note 59
3.5.3 Failure of the State to act with due diligence regarding domestic violence against women.

(Maria Fernandes v Brazilian government, A.T. v. Hungary and F. Yildirim v Austria )

Both the Inter-American Commission and the CEDAW committee have dealt with individual complaints: the decision of those bodies build upon the principles discussed above and highlight the practical need for protective measures and effective prosecutions. These cases are key sources of how these bodies have interpreted due diligence.

3.5.3.1 Maria Fernandes v Brazilian Government

In 2001, the Inter-American Commission on Human Rights (“Commission”) heard a complaint from Maria Da Pehna Maia Fernandes alleging that the Brazilian government had implicitly condoned the violence perpetrated against her by her husband, Heredia Viveiros, by failing to adequately protect her or punish Viveiros for his crimes. The local prosecutor had filed attempted murder charges against Viveiros, but the case had languished for eight years before the court filed a guilty verdict. In 1998, following appeals and second trial that resulted in a guilty verdict, Mrs. Fernandes filed her complaint with the Commission. By that point, it had been 15 years since the attack, there had been no judicial resolution, and Viveiros had remained free the entire time.

The Commission looked to several controlling documents in finding that Brazil had failed to exercise due diligence in responding to the plight of Mrs. Fernandes. Among other legal sources, the Commission relied on the American Declaration of the Rights and Duties of Man and the Convention of the Belem Do Para. In its report, the Commission found that the violence suffered by Mrs. Fernandes was “party of a general pattern of negligence and lack of effective action by the State in prosecuting and convicting aggressors” and that “general and discriminatory judicial ineffectiveness” create a climate that is conducive to domestic violence.”


126 Ibid, p. 1-20

127 Ibid

128 Ibid, p. 56
Specifically, the commission found Brazil to be in violation of Article 8 and article 25 of the American Convention which guarantee right to fair trial and judicial protection. The Commission reasoned that by allowing perpetrators of domestic violence to enjoy impunity with no threat of prosecution or punishment Brazil was complicit.

The Commission also found Brazil’s failure to respond to domestic violence evidenced widespread gender discrimination. In reaching this finding the Commission relied on Article 24 of American Convention, which articulates the equal rights of all individuals before the law. The Commission pointed to the evidence from studies showing that in Brazil, women are affected by family violence in significantly disproportionate numbers to men and that complaints of domestic violence are often not fully investigated or prosecuted. The Commission noted that 70 percent of the criminal complaints pertaining to domestic violence were put on hold without any conclusion being reached and that only few percent of criminal complains of domestic violence against women lead to the conviction of the perpetrator. According to Commission, such a systematic failure on the party of the state to meet a due diligence standard in insuring a right of the women to be free from the violence is tantamount to gender-based discrimination.

3.5.3.2 A.T. v. Hungary

In 2005, the CEDAW committee heard a similar complaint in AT. v Hungary and, like the Commission, CEDAW committee found that, the state had failed to act due diligence in providing the maximum protection of the law to victims of domestic violence. The petitioner described years of abuse from her former common law husband and argued that Hungarian authorities had failed to provide effective protection for her and her two children. At a time, Hungary had no legal mechanism for obtaining protection or restraining orders, and the criminal proceedings that had been initiated against her partner had been dragging for

129 Ibid, p. 60
130 Ibid
131 Ibid, p.45-50
132 Ibid, p. 47
years while remained free. The petitioner could not leave her home because domestic violence shelters were not equipped to take in her disabled son. The petitioner alleged violation of Articles 2, 5, and 16 of CEDAW, which include the right to equality before the law, equality in marriage, and the duty of the a state to adopt measures to eliminate discrimination against women. According to petitioner, the same violations affect many Hungarian women, and she called for CEDAW Committee to recommend changes in the Hungarian legal system and support victims of violence.

The CEDAW Committee determined that Hungary had indeed failed in its obligations under the Articles cited by the petitioner. The CEDAW Committee pointed to Hungary’s own admissions that domestic violence cases do not enjoy high priority in court proceedings and that there was a lack of resources available to the petitioner, even at a time of her complaint to the CEDAW Committee. The Committee concluded that the state’s inadequate response constituted a “violation of the author’s human rights and fundamental freedom, particularly her rights to security of person.” Additionally, the CEDAW Committee commented that the state’s to act in this case was emblematic of the general attitude in Hungary regarding domestic violence. Referencing a CEDAW Country from 2002, the CEDAW Committee noted that, there was concern about the “persistence of entrenched traditional stereotypes regarding the role and responsibilities of women and men in the family” in Hungary and that such concern was borne out in this case.

The CEDAW Committee concluded by recommending that Hungary should immediately ensure that petitioner and her two children will be secure and will receive services and support, including legal assistance, shelter, and potential reparations. The CEDAW Committee also recommended that, Hungary should assure victim of domestic violence the maximum protection of law by acting with due diligence to prevent and respond to such violence against women, and investigate promptly, thoroughly, impartially and seriously all

134 Ibid, Article 2, 5 and 16
135 Ibid, 3.4
136 Ibid
137 Ibid
138 Ibid l(a),(b)
allegation of domestic violence and bring to offenders to justice in accordance with international standards. In addition, the CEDAW Committee call for Hungary to implement expeditiously and without delay a prior recommendation to introduce a specific law prohibiting domestic violence against women which will provide for protection and exclusion orders. However, the recommendations of the Committee have not yet been followed because of lack of political will on the justifications that Committees will are not binding. The opinions and recommendations in these cases repeated many of some provisions of other human rights instruments. In doing so, they reflected a growing consensus on due diligence standard with increasingly clear guidelines on ensuring access to protection orders and prosecution.

On the other hand, it can be argued that the outcome of these decisions has benefited to the theoretical reasoning on the due diligence obligation of the state rather than to the victim of the case or victims of domestic violence in general. The efficiency of CEDAW decisions are therefore questionable since they do not seem to be enforced by the states.

3.5.3.3 F. Yildirim v Austria

This case illustrates the cry of a woman Mrs. Yildirim who is now deceased after being stabbed by her husband following constant death rate that were reported to the police. The victim was an Austrian citizen who had Turkish origins and the facts takes place in Austria. Despite Mrs. Yildirim reports, the public prosecutor twice rejected her request that the perpetrator be detained. The police repeatedly intervened and the victim was granted many restraining orders but this was not enough to protect Mrs. Yildirim. Upon her death, her husband was immediately arrested, convicted and sentenced to life in prison.

The application was filed by NGOs on behalf of the descendants of the deceased victim on the basis of a violation of the CEDAW with respect to; Article 1 on the definition of sex discrimination which also includes gender based violence, Article 2 on the obligations of States regarding the Elimination of Discrimination Against Women, Article 3 which is on the

139 Ibid [a],[b],[f],[g]

140 Ibid

obligation of the State to take appropriate measures for the political, social, economic and cultural development of women and Article 5 on the elimination of prejudices and customs that perpetuate gender-stereotypes.

In this analysis, the Committee notes that the State of Austria has a comprehensive legislation to address domestic violence. In addition to that, criminal and civil law remedies, awareness raising activities, education and training programs, shelters, counseling for victims of violence and work with perpetrators were measures that were made available. However, this system failed in practice to protect the applicant. More specifically, the Committee considered that the State’s failure regarding the detention of the husband constituted a breach of its due diligence obligation to protect the applicant. The State advanced the argument that it is difficult to evaluate the degree of `dangerousness` of an offender and it is necessary to determine whether the imposition of detention would constitute a massive interference with a person’s fundamental freedoms. The Committee held that “the perpetrator’s rights cannot supersede women’s human rights to life and to physical and mental integrity” and finally concluded that even though the husband was prosecuted and convicted for the murder, CEDAW found a violation of Article 2(a) and (c) through (f); Article 3 in conjunction with Article1; General Recommendation no. 19 of the Committee and the corresponding rights of deceased to life and to physical and mental integrity.\footnote{\textit{Ibid}} The above mentioned CEDAW provisions were violated since the State failed to fulfill its due diligence obligation to protect the applicant.

The basic duties of due diligence standard to address violence against women are to prevent, investigate, punish investigate and provide compensation. Whether measures a state has taken to prevent or investigate, for example, are adequate to meet the due diligence requirement will depend on the context and fact of the situation. Preventive measures should include training as well as education against the patterns of thinking that allow violence against women to exist in all societies with impunity.

The next chapter introduces the overview of how the Norwegian government has responded to domestic violence, achievements and challenges are also analyzed later in this part.
4.0 Overview of the Norwegian government response to combat violence against women including domestic violence.

This part briefly presents different governmental and legislative measures taken by the Norwegian government to combat violence against women including domestic violence and the next part will be the analysis of some of these measures its achievements and weaknesses.

4.1 Governmental and legislative measures

4.1.1 National Action Plan to combat violence against women and domestic violence

In recent years, the Norwegian authority has implemented large number of measures to combat violence against women including domestic violence. These efforts have mainly been channeled through the government’s Action Plans to combat violence against women (2000-2003). In December, 2003 the Committee on Violence Against Women, which was an independent committee presented a report, (Retten til liv uten vold-The right to a life without violence).\(^{143}\) In this report a number of measures are proposed to improve the situation of women who are victims of domestic violence, for instance by strengthening treatment programs for perpetrators and improving services for children who witness violence and by introducing a new penal provision to cover domestic violence against women. These measures are being implemented in the Action Plan for (2004-2007).\(^{144}\)

As a party of policy initiatives to stop violence against women, the Norwegian government, launched another Action Plan 2008-2011, called “turning point”\(^{145}\) the plan was prolonged to January 2012. This action plan provides measures for victims safety, treatment of offenders, restorative justice, research, and awareness-raising. Nationwide awareness-raising and preventative measures have been implemented in cooperation with NGOs, the business sector, and other actors. A pilot project is to be developed for upper secondary schools and for

\(^{143}\) NOU 2003: 31 supra note 1


children, with a special focus on family relationships, communication and conflict management. Awareness-raising among immigrants and refugees, as well as among the armed forces, has also been developed.

These Action Plans are important because they showed that domestic violence is something which society sees as unacceptable and it is something the community wants to combat it and make changes. It give the signal that this matter is given the high priority by public authority in order to protect the people who are exposed to domestic violence in their homes who are mostly women.

In addition to governmental Action Plans, the White Ribbon Campaign 2011\textsuperscript{146} (kampanjen hvitt bånd) was conducted in cooperation with the national football association and the largest trade union in Norway. White ribbon campaign did a survey on men’s and women’s attitude on violence, involvement and commitment (engasjerte og enige). The result of the study is that there are small differences when it comes to attitudes towards violence, and that, men in Norway to a very large degree, support non-violent behavior.\textsuperscript{147} This made it easier to do the campaigning together with male dominated organizations. This campaign was the only national awareness campaign on violence against women that has been organized in Norway in the recent years and this aimed to reach more than one million people, with a clear message on the responsibility of men to take part in stopping violence against women.

4.1.2 Shelters

In the past 25 years, shelters have been important actors in efforts to combat domestic violence in Norway. Most of them were established in the period 1980-85. Today there are 51


shelters all over the country.\textsuperscript{148} Where 22 are for men and the rest are for women, out of 22 designed for men, only 10 were used in 2011 due to the lack of male victims.\textsuperscript{149}

The shelters provide a low-threshold service, offering accommodation, conversation and counseling for women victims of violence and their children on the basis of the principle of help for self-help. The women’s shelters fulfill another important function in that they enable women victims of violence to meet other women in a similar situation. Since 1992 women and their children have spent more than 1.5 million nights at Norwegian shelters.\textsuperscript{150} The total of 2368 stayed at crisis centers in 2009, of the women reported that they have repeatedly being exposed to violence. These shelters were previously funded by the government 80 percent and 20 percent by municipalities.\textsuperscript{151} But according to the new Crisis Center Act which came into force 2010, all municipalities are under obligation to provide shelters for women, men and children who are exposed to violence and abuse in close relationships. This means that the shelters are funded by municipalities alone, and the State grants for shelters are incorporated into municipal budget.

Statistics from Norwegian crisis centers shows that women from ethnic minority backgrounds are the main users of women shelters.\textsuperscript{152} The proportion of residents in women’s shelters with minority backgrounds has risen steadily in recent years. In 2001, 32 per cent\textsuperscript{153} of all residents in women’s shelters had an ethnic background that was not Norwegian. In 2006 this figure had risen to fifty 6 per cent.\textsuperscript{154} One third of these women had been abused by ethnic

\textsuperscript{148} Action Plan against Domestic Violence 2008-2011 Norway, \textit{supra} note 145

\textsuperscript{149} \textit{Ibid}


\textsuperscript{151} Supplementary Report to the 8th Norwegian Report to the CEDAW Committee, \textit{supra} note 17

\textsuperscript{152} Consultation with womens' shelter, see also Wenche Jonassen og Elin Skogøy “Et hjem for oss, et hjem for deg”. En studie i endring i brukersammensetning og bruk av krisesentrene. Rapport 1/2010 NKVTS

\textsuperscript{153} \textit{Ibid}, p. 6

\textsuperscript{154} \textit{Ibid}, p. 6
Norwegia men. Around 2300 women used the daytime services offered by women’s shelters’ in 2006.\(^{155}\)

### 4.1.3 Family violence coordinators

In 2002, a system of family violence coordinators was established in each of Norway’s 27 police districts.\(^{156}\) According to the government’s Action Plan of action, Vendepunkt (Turning point) (2008-2011), each police district must have at least one domestic violence coordinator in full-time post. The coordinators are to help ensure that the police meet the victim of violence and her family and friends with understanding, knowledge and insight - in both professional and human terms. In the largest police districts, separate teams are being established to work on violence and abuse in intimate relationships.

A telephone survey recently conducted by an organization providing legal action to women (Juridisk Rådgivning for Kvinner-JURK) showed that 19 out of 27 police districts had not satisfied this requirement.\(^{157}\) The degree of priority given to domestic violence varied significantly from one police district to another, apparently independently of the geographical prevalence of this type of case. Oslo has domestic violence team with three domestic violence coordinators whereas 19 police districts have failed to reach the targets laid down in the action plan. This illustrates the scheme is fragmentary and unsystematic implemented. Furthermore, the results indicated that there is considerable potential for further development.

### 4.1.4 Restraining orders

The restraining order (adopted in Norway in 1994, and expanded in 2003 to also permit restraining orders applying to their own home) is imposed by the prosecuting authority when there are grounds for suspecting that a person will commit a criminal offence, persecute another person or violate the peace of another.\(^{158}\)

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\(^{155}\) Ibid, p. 6

\(^{156}\) Action Plan (2008-2011), supra note 145

\(^{157}\) Tina S. Nordstrøm and Marte Johansen in Kritisk Juss 2011 pages 1-6: “Politiets familievoldskoordinator – en ordning som ser bra ut på papiret, men hva gir den i praksis?” (“The police’s family violence coordinator – a scheme that looks good on paper, but what are the practical results?” – in Norwegian only).

According to the police statistics on formal complaints, in 2008 there were 1,059 breaches of restraining and exclusion orders, up 12.7 percent from 2007. The increase for the entire five-year period was 15.7 percent. In 2008, the number of persons issued with a personal attack alarm was 1,636, as against 1,370 the year before.

In several cases, the restraining order has proven ineffective as protection for women who are exposed to threats and violence. The scheme has never been evaluated or studied. No statistics exist on the number of restraining orders issued. There are also no statistics or codes in STRASAK on recorded cases of violence against women, and reported crimes of violence are not gender-determined. This is a major problem.

The conditions for being issued with a personal attack alarm appear to be person-dependent and arbitrary. No uniform practice exists. Women exposed to threats and violence should be treated equally all over the country. Women who experience repeated breaches of a restraining order find that their case is dropped or that the police do not believe them and fail to investigate the case. Many women in Norway are therefore forced to live in hiding to preserve their life and health.

4.1.5 Legislative amendments

There are no specific legislation concerning domestic violence in Norway, and the general provision of the penal code is applied in this cases.

On 20th December 2005, the Parliament adopted a penal provision regarding domestic abuse (section 219 of the Penal Code). The provision came into force on 1st January 2006. The legislative amendment modernizes and expands the former section 219 regarding domestic violence, which was outdated, difficult to understand and contained some complicated conditions. In the new provision, it is the perpetrator’s long-term terrorization and abuse of the next-of-kin that constitutes the criminal aspect of the act.

159 Ibid
160 Ibid
161 Ibid
162 Supplementary Report to the 8th Norwegian Report to the CEDAW Committee, Supra note 17
163 Ibid
The penal provision will strengthen the legal status of women since women are the main victims of intimate partner violence. Rules regarding ban on contact, etc. Section 22 of the Criminal Procedure Act regarding a ban on visits was amended by the Act of 30 August 2002 No. 67 to allow bans on persons staying in their own home. The purpose of this provision is to prevent violence against women and improve the situation for victims of violence. The provision will be particularly relevant when the person who is to be protected shares a household with the person who is the subject of the ban on visits. A ban prohibiting a person from visiting his or her own home may be imposed irrespective of who owns the residence. A new, more comprehensive provision prohibiting contact in section 33 of the Penal Code came into force on 1st January 2006. The provision is particularly designed to protect the aggrieved person in cases concerning abuse of women and domestic violence. The new penal provision makes it possible to impose a ban on more forms of threatening or annoying behavior than was previously the case.

4.1.6 Mobile violence alarms
On 1st January 2004 the police initiated a nation-wide system of mobile violence alarms. Used in combination with other measures, mobile violence alarms are intended to give persons under threat of violence greater freedom of movement and help prevent violence and threats. According to Anna Ljunggren a parliament representative, between 1200 and 1800 women goes with mobile violence alarms all the time in Norway. The alarm system is based on two geographical positioning systems (GPS and GSM) to ensure that the police can locate the person under threat as accurately as possible. When the alarm is triggered, the person concerned can communicate directly with the police operations centre. To ensure that the system is used effectively in every police district, the Directorate of Police has drawn up special guidelines for the provision of mobile violence alarms. A special information brochure and instruction manual have also been prepared for the threat victim.

164 Ibid
The state can decide of the measures, but international practices require these measures to be effective and to be immediate in character. More specifically, they must be capable of removing the ongoing risk of domestic violence; they must be quick, simple and accessible. The most important is that they must be enforced. The problem generally comes from the fact that these measures are enshrined in law, but they are very often ignored in practice. The next section presents the analysis of measures taken by Norwegian government as part of its international obligation regarding violence against women including domestic violence.

4.2 Norway’s international obligations and responsibility related to violence against women and the analysis of measures undertaken.

In this part some of measures undertaken by the Norwegian government regarding violence against women are analyzed. Whether Norway is implementing in full the international standards on violence against women is also the issue of concern in this part.

It is now well established under international law that violence against women is a form of discrimination against women and a violation of human rights. States’ obligations to respect, protect, fulfill and promote human rights with regard to violence against women encompasses the responsibility to prevent, investigate and prosecute all forms of, and protect women from, such violence and to hold perpetrators accountable.

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167 Ibid


169 This terminology was first elaborated by the Special Rapporteur of the Sub-commission on the right to adequate food as a human right (E/CN.4/Sub.2/1987/23 paras. 66-69), and has subsequently been advanced by Committee on Economic, Social and Cultural Rights general comment No. 14 (HRI/GEN/1/Rev.8); On the general issue of responsibility of States for internationally wrongful acts, see the articles on responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its 53rd session, annexed to General Assembly resolution 56/83

170 See HRI/GEN/1/Rev.8, para. 27.
States are responsible under international law for human rights violations and acts of violence against women perpetrated by the State or any of its agents.\(^{171}\) Such responsibility arises not only from State actions, but also from omissions and failure to take positive measures to protect and promote rights.\(^{172}\)

Norway has embraced several international obligations related to the protection of violence against women. It has ratified CEDAW without reservation on 21\(^{st}\) May 1981, with entry into on 3\(^{rd}\) September 1981. On May 2002, Norway ratified the Optional Protocol to CEDAW Convention adopted by the UN 54\(^{th}\) General Assembly on 6\(^{th}\) October 1999.\(^{173}\) The CEDAW Convention and its Optional Protocol were, by Act of June 10\(^{th}\) 2005, incorporated into Norwegian law by the Gender Equality Act. CEDAW and its Optional Protocol had been incorporated into Human Rights Act in 2009, and are integral part of Norwegian legislation.\(^{174}\) Through its ratification of CEDAW and its optional protocol Norway assumed the obligation to protect women from domestic violence and other forms of gender-based violence. However, despite of being an integral part of Norwegian legislation CEDAW Convention is rarely invoked in the courts.\(^{175}\) There is no training or information initiates concerning CEDAW in the public administration or judicial system.\(^{176}\) Therefore CEDAW is not been used as a tool by lawyers and judges. In its concluding comments for 7\(^{th}\) periodic report of 2007 for Norway the Committee on the Elimination of Discrimination Against Women (CEDAW Committee) recommended the State party to increase its effort to raise awareness about the Convention and its optional protocol and the committees general

\(^{171}\) See General Assembly resolution 56/83, article 5. It has been argued that this definition includes public corporations, quasi-public entities and certain private companies. See Crawford, J., The International Law Commission’s Articles on State Responsibility: Introduction, Text and Commentary (Cambridge, University of Cambridge, 2002), p. 10. See also article 8.


\(^{173}\) UN Committee on the Elimination of Discrimination against Women (CEDAW) 39\(^{th}\) session supra note 29

\(^{174}\) Ibid

\(^{175}\) Ibid

recommendations among judges, prosecutors and lawyers to ensure that the spirit, objectives and provisions of the convention become well known and regularly used in judicial processes.\textsuperscript{177} Moreover, according to CEDAW Committee there is no any reference to the Convention in the Action Plan for Gender Equality – 2014 therefore, there is a doubt if Norway is applying the Convention in practice.\textsuperscript{178} More need to be done legislatively to give full effect to the provisions of the convention. In general recommendation no. 19, the Committee on the Elimination of Discrimination Against Women (CEDAW) concluded that gender-based violence including torture is a form of discrimination against women as defined under Article 1 of CEDAW. However, in its concluding observation of 8\textsuperscript{th} periodic report for Norway, the CEDAW Committee argues that the State part is failing to sufficiently address one of the root causes of discrimination by not addressing harmful gender stereo-types nurturing discrimination. A failure to address and eliminate prejudices and harmful gender stereo-types may be in breach of CEDAWs Article 5. However, in action plan for Gender Equality presented in November 2011\textsuperscript{179} the government acknowledges the harmfulness of existing stereo-types and proposes certain measures in this regards. What is needed is the implementation of such measures.

Moreover when it comes to preventive measures the amendment of the Penal Code on domestic violence of January 2006 which came into force 2010 includes all forms of domestic abuse Norway assumed its obligation regarding the prevention of domestic violence acts. In addition to that awareness raising such as white ribbon, education and training programs, counseling for the victims and treatment for perpetrators of domestic violence, national Action Plans and many other measures. However the measures are in place but the problem remains to the implementation aspect. According to the report written by JURK\textsuperscript{180} (Legal Advice for Women), most of the measures taken by the government to combat domestic violence are either not implemented or partial implemented.

\textsuperscript{177} Concluding comments CEDAW report, thirty-ninth session, 2007, supra note, 29

\textsuperscript{178} Ibid

\textsuperscript{179} Likestilling 2014. Regjeringens handlingsplan for likestilling mellom kjønnene.

\textsuperscript{180} JURK Report (2012), NOU 2008:4 ”From Words to Action. Combating rape requires action”. – What has been done?
As a part of State obligation under international law, cases of violence against women including domestic violence must be investigated and appropriately punished. A number of States, such as Norway have recently made amendments to their internal legislations in order to modify discriminatory provisions, to ensure that the acts of violence are met with appropriate punishment. For example in Norway after the amendment of the Penal Code on domestic violence, the maximum sentence has been raised from 3 to 4 years of imprisonment for domestic abuse while the maximum sentence for gross domestic abuse is up to 6 years of imprisonment. A considerable increase in penalty levels within the sentencing frameworks has also decided for all forms of domestic abuse. However, the NGO shadow report states that although there is progress by the government to tackle domestic violence and gender violence in general, many cases of domestic violence have low investigative priority meaning that the likelihood of criminal convection is needlessly low. To fulfill this obligation Norway must make more effort to investigate cases of violence against women including domestic violence.

Generally speaking, failure by law enforcement authorities to seriously investigate and punish domestic violence crime appears to be quite common. Even when cases of domestic violence against women or gender-based violence in general do reach the judicial system, there are still alarming numbers of instances where judges give reduced or inappropriate sentences for these cases. In Norway for example, during the consultation with CEDAW Committee experts, it was stated that a public prosecutor said “The sentence of 3 years for rape of a sleeping woman is too high. A man who does this (rapes a woman) is overstepping his mark a bit.” This clearly highlights the embedded acceptance of rape as non serious


182 Ibid

183 The World YWCA report on Norway-51 CEDAW session, supra note 176.


185 Ibid

186 The World YWCA report on Norway-51 CEDAW session, supra note 176
crime when senior judicial personnel hold this opinions and this also points to the notion of women deserved to be raped. It is important that prosecutors, judges and the whole judicial administration to be educated regarding the prosecution and judgment of domestic violence cases, and where sexual violence is involved it requires a gender-sensitive approach from relevant authorities. There has been 14 percent increase in rape cases from 2010;\textsuperscript{187} however the government has put this down to women now having a better understanding of the legal system and being willing to come forward. In the shadow report from the NGO community relate that the authorities and justice system in Norway claim to give high priority to combating gender based violence including rape, however the rise of women facing violence are in practice often hampered. They state that this is the strong indication of existence of pervasive gender-based violence and discrimination against women in Norway, with only 10 percent of rape cases resulting in conviction.\textsuperscript{188}

The Special Rapporteur’s 2011 report emphasized the importance of prosecution in cases involving violence against women:

\begin{quote}
[I]low levels of prosecution of crimes against women reinforce the belief among victims that there is no systematic and guaranteed judicial response to violence against women and that there might be no punishment for their abusers. This results in underreporting, further minimization and invisibility of these crimes, and the reinforcement of the continuum of violence affecting women.\textsuperscript{189}
\end{quote}

Even the Committee on the Elimination of all Violence Against Women (CEDAW), has explained its concern about an extremely low percentage of reported rapes cases resulting in trial and convictions in Norway. This is highlighted in its different periodic reports among others 5\textsuperscript{th} and 6\textsuperscript{th} periodic report for Norway:

\textsuperscript{187} Ibid

\textsuperscript{188} Ibid

It is also concerned that an extremely low percentage of reported rapes results in convictions…. The Committee also urges the State part to initiate research and analysis of the causes of the very low percentage of trials and convictions in reported rape cases.\textsuperscript{190}

The author also see the important that Norway initiate research and analysis of the causes of the low percentage of trials and conviction for the reported rape cases in order to find the root causes of the problem. High levels of prosecution of crimes against women will reinforce women to belief that there is a systematic and guaranteed judicial response to violence against women and might be the motivation to other victims of such violence to report their cases. This may reduce the problem of underreported cases of violence against women.

Shelters are an important actor to protect women affected to gender-based violence. Women subjected to violence need access to shelters and other services as set out in a number of international instruments, policy and practice.\textsuperscript{191} They should meet safety standard to protect them from further abuse. As mentioned earlier on, out of 22 shelters designed for men, only 10 were used in 2011 due to the lack of male victims. The situation where by many men’s shelters were not used was criticized differently among others the World YWCA\textsuperscript{192} and CEDAW committees in its concluding comments of the 8\textsuperscript{th} Period Report for Norway. Arguing that, it was important to identify the needs properly because the funding that could have been used for women was in fact wasted. While some men’s rooms are empty women might lack accommodation at the shelters. Even if the offer is for both sexes this should not lead to poorer service for women. All uses should get better service but not at the expense of existing services. Mostly, it is women who are affected by violence in intimate relationships, and the main users of the centers are therefore still abused women, so they should be given the priority.

As mentioned earlier on, that the new Crisis Center Act requires the shelters to be funded by municipalities alone has resulted into much poorer financial situation in many crisis centers, whereby many crisis centers were closed down. For example, some regions such as

\textsuperscript{190} Concluding observation: 28th session, 5th and 6th periodic reports, Norway.


\textsuperscript{192} The World YWCA 2012, supra note 174
Vesterålen in Nordland has decided to remain with only one shared crisis center for the entire region which is centered at Sortland. This crisis center serves about 6 municipalities and within a wide area (Sortland, Øksnes, Hadsel, Bø, Andøy and Lødingen). Taking an example of a woman who lives at Andøy who seeks for the shelter should travel for about 100km to reach the crisis center at Sortland. Some women victims of domestic violence may find it difficult to reach the crisis center due to the long distance from their homes to the location of centre, also taking into consideration that, most of the local police officers are normally closed at 16hrs and its almost impossible to get police service out of the working hours, for example Bø at Vesterålen. The author visited Vesterålen Crisis Center in Nordland where the leader of center (Nann-Eli Rushfeld) revealed that there has been a major cut of resources as a result of Crisis Center amendment. On the other words this new model for financing crisis centers has resulted into the reduction of the services and poor protection to women victims of domestic violence.

Section 2 of the Crisis Center Act prescribes that Crisis Center service shall be offered to men and women separately but does not specify this in more details. Hence, it’s up to the municipalities, depending on their financial situation and at their own discretion, to decide how to organize the provision of such accommodation for women and men. This has resulted in some crisis centers having accommodation for women and men at the same address. The Equality and Anti-Discrimination Ombud is aware that at least one crisis center had a shared common room for men and women in 2010.\textsuperscript{193} This gender blind practice does not take into consideration the specific needs for battered women and men may be subjected to different forms of domestic violence and hence be affected very differently by this and other forms of gender based violence.

This practice of accommodating women and men at the same address may pose more problems to some group of women. For instance if the shelters begin to accommodate women and men together, women from immigrant backgrounds (a large group of current users of shelters)\textsuperscript{194} may feel that for religious and cultural reason then they can no longer come to these shelter and the results is to remain in the violent relationships. If women and men who

\textsuperscript{193} The equality and Anti-Discrimination Ombud, Report to the Pre-session of the CEDAW, A supplementary report to Norway’s 8\textsuperscript{th} official report to the CEDAW Committee.

\textsuperscript{194} Supplementary Report to the 8th Norwegian Report to the CEDAW Committee, \textit{supra} note 17
are victims of domestic violence are allocated at the same crisis centre, the dignity and safety of these women may be in question. It is not easy to identify who the victims are, or whether they are men perpetrators who are looking for their female victims. If women no longer feel safe at the shelters then the state have not yet met the requirement to take all measures necessary to prevent persons, organizations or corporations to discriminate against women enshrined in Article 2e of CEDAW.

Moreover, the State might be held responsible under “due diligence” principle if male victim leaving in the crisis center happen to harm a female victims within the same center. This is due to the fact that the security of these women victims is not satisfactorily addressed and no equal protection for male and female either. The Norwegian Crisis Center Act has been criticized by many among others the Equality and Anti-Discrimination Ombud, the University of Oslo department of women’s law and shelter secretariat.\textsuperscript{195}

A study has shown that women with disabilities are 5 times more exposed to violence or threats of violence and discrimination as other women.\textsuperscript{196} However, according to Equality and Anti-Discrimination report to CEDAW Committee, many Norwegian shelters for battered women are still not adopted to the need of women with disabilities.\textsuperscript{197} In 2009 it was revealed that only 24 out of 50 crisis centers were accessible for women with physical disabilities.\textsuperscript{198} In other words, women with physical disability do not have equal access to crisis centers as other women. Shelters has low-threshold service, must be accessible and adopted to various group of women, including disabled women, women from ethnic minorities, lesbians and trans-gendered.

\textsuperscript{195} Lov 2009-06-19 nr. 44: Lom om kommunalekrisesentertilbud (Ksl)


\textsuperscript{197} Ibid

\textsuperscript{198} Information submitted by FOKUS to CEDAW Committee, supra note 211
Another weakness related to crisis center services according to NGO shadow report (2011)\textsuperscript{199} is that, the shelters have neither expertise nor the capacity to attend women with serious mental health problem/problem involving drugs/intoxicants. This means that these women may experience problem in getting help and it may be difficult for them to obtain a safe and free place to stay if they need to escape their homes.

State must ensure that women with serious mental illness and drug dependency who are exposed to violence are provided with a specialist crisis facility with treatment by health personnel with appropriate expertise. The services provided for women experiencing violence is not always designed to take into account the different needs of the various group of women.

As it can be noticed, Norway is making considerable effort to create an environment favorable to combat domestic violence against women as its responsibility as a State, however, efficiency of such measures are questionable when it comes to the issue of practical application. According to the report written by JURK\textsuperscript{200} (Legal Advice for Women), most of the measures taken by the government to combat domestic violence are either not implemented or only partially implemented. One can argue that Norway should make more effort to implement in full international standards on violence against women as its responsibility. It seems that violence against women including domestic violence has not yet received the priority required to enable significant change.


\textsuperscript{200} JURK Report (2012), NOU 2008:4 “From Words to Action. Combating rape requires action”. – What has been done?
5.0 Recommendations and conclusion

5.1 Recommendation

It seems that this whole theoretical demonstration of State responsibility is not enough to bring sustainable solutions to the problem. Much more remains to be done to create environment where women can live free from gender-based violence. The development of women’s right in general with aim of strengthening women and makes them less vulnerable and less risk of facing such problem should be given the priority. There is also a need to engage men more effectively in the work of preventing and eliminating such violence and to tackle stereo-types and attitudes that perpetuate male violence against women.

States must incorporate international standards into domestic law, drafting new legislation specifically for domestic violence, re-designing remedy systems to allow for more appropriate and accessible reparations and transforming underlying cultural attitudes that perpetuate or tolerate violence against women.

States have the obligation to initiate change in social and cultural behaviors that the Convention on the Elimination of Violence Against Women (CEDAW) and other international conventions and agreements recommends to prevent violence against women, action must be taken at local level by organizations and governments to promote education on law and human rights. In case of Norway, government should collaborate with NGOs such as JURK and FOKUS to expand recourses for women victims of violence to reach beyond cities into more rural areas.

Several studies have indicated that migrant women in Norway are more likely to face domestic violence than other groups. Therefore, development of State strategies to address such violence should be based on these women’s experiences and requires their involvement.

The fact that some of shelters currently accommodate both men and women at the same place, some women especially migrant women may feel that for religious and cultural reasons they can no longer come to these centers. This practice is the result of the Crisis Centre Act of 2010 which requires the shelters to be funded by municipalities alone. This has resulted into much poorer financial situation in many Crisis Centers where many Crisis Centers were closed down. The Norwegian government should review this Act and provide enough
financial support for current programs/centers/shelters focused on the prevention and protection of women to ensure accessibility and effectiveness.

Legal arrangements are not enough; it is necessary to focus on other preventative measures aiming to combat traditional ideologies used to justify gender-based violence. For this purpose, the State should develop public awareness through education. Specified professional groups, such as the police and the judiciary, should also be given appropriate trainings in order to learn how to address domestic violence cases in a gender-sensitive manner.

5.2 Conclusion

Over the past two decades, there has been significant progress in elaborating and agreeing on international standards and norms to address violence against women. These form a baseline of commitment by States and other stakeholders, including the United Nations system, to work to end violence against women. States responsibility and obligations to address violence against women are concrete and clear and encompass violence committed both by State agents and non-State actors. States have a duty to prevent acts of violence against women; to investigate and prosecute such acts when they occur and punish perpetrators; and to provide remedies and redress to those against whom acts of violence have been committed.

Violence against women is both a cause and consequence of discrimination against women and of their inequality and subordination. States have an obligation to respect, protect, promote and fulfill all human rights, including the right of women to be free from discrimination. Failure to do so results in and exacerbates violence against women.

Despite the adoption of the international standard norms regarding violence against women by the Norwegian government, violence against women remains a complicated and debilitating issue for the Norwegian government. Although most of the regulations and changes have strengthened women status and role, domestic violence and other forms of violence against women remains widespread in Norway according to the recent research and studies.


202 Ibid
Due to the high rate of violence against women in Norway one might suggest that more additional significant actions is needed in order to stop such kind of crime. By fulfilling its obligation regarding a protection of violence against women Norway can both improve the lives of Norwegian women and provide an example for the rest of the world.
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