



## **AMICUS CURIAE**

**PRESENTED BY THE INTERNATIONAL COMMISSION OF JURISTS**

**BEFORE THE INTER-AMERICAN COURT OF HUMAN RIGHTS**

**IN THE CASE OF CAMPO ALGODONERO: CLAUDIA IVETTE GONZÁLEZ,  
ESMERALDA HERRERA MONREAL AND LAURA BERENICE RAMOS  
MONÁRREZ V. THE UNITED MEXICAN STATES**

### **I. INTRODUCTION**

1. This Amicus Curiae is respectfully submitted on behalf of the International Commission of Jurists to the Honourable Inter-American Court of Human Rights, in relation to the case of *Campo Algodonero: Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez against the United Mexican States*. The International Commission of Jurists is grateful to the Honourable Court for the opportunity to present its considerations on the nature and content of the international legal obligation on States to guarantee the human rights of those within its jurisdiction.
2. The International Commission of Jurists is an international non-governmental organization, established in 1952 and headquartered in Geneva, Switzerland. It is dedicated to promoting the understanding and observance of the Rule of Law and the legal protection of human rights. It is comprised of 60 eminent jurists, who represent the different legal systems of the world. It has several national sections and affiliated organizations. It enjoys consultative status with the United Nations Economic and Social Council (UNESCO), the Council of Europe and the African Union. It maintains cooperative relations with various bodies of the Organization of American States.
3. The International Commission of Jurists' legitimate interest in the present case is reflected in the fact that it works to advance the rule of law and to ensure the domestic implementation of international human rights law. In this context it endeavours to promote States' compliance with their international human rights legal obligations, to

support efforts to combat impunity and ensure legal accountability for human rights violations, and to advance victims' access to remedies, including reparations.

4. This case concerns the nature and requirements of States' international obligation to guarantee human rights. Among other things the applicants allege the failure of the United Mexican States to comply with its international legal obligation to guarantee human rights, as required by Article 1 of the *American Convention on Human Rights*<sup>1</sup> and general international human rights law, in respect of the disappearances and murders of Claudia Ivette González, Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez in September and October 2001 in the area of Ciudad Juárez in the United Mexican States. The applicants maintain that the disappearance and murder of these three particular women took place in the context of a general situation prevailing in Ciudad Juárez since 1993 in which there had been high numbers of similar disappearances and murders of women, and evidence of related sexual violence.
5. In the proceeding paragraphs the International Commission of Jurists will address the content of the international legal obligation to guarantee human rights with specific reference to the obligation to exercise due diligence to prevent, investigate and punish certain conduct by private actors. In particular the International Commission of Jurists will focus on the requirements of the obligation to exercise due diligence in relation to the right to life, and in the context of violence against women. It will address the content of States' obligations to take appropriate measures to *prevent* impairments of the right to life by private actors and to *prevent* violence against women by private actors. It will also address the obligations on States to respond to such conduct with appropriate measures, including by carrying out an investigation with a view to prosecution and punishment.
6. The United Mexican States is a party to a number of relevant international and regional legal instruments all of which entered into force for the State between 1981 and 1998. These include, the *American Convention on Human Rights*,<sup>2</sup> the *International Covenant on Civil and Political Rights*,<sup>3</sup> the *Inter-American Convention on the Prevention, Punishment and Eradication of the Violence Against Women (Convention of Belem do Para)*,<sup>4</sup> the *Convention on the Elimination of All Forms of Discrimination Against Women*,<sup>5</sup> the *Inter-American Convention to Prevent and Punish Torture*,<sup>6</sup> the *Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*.<sup>7</sup> The United Mexican States is also a party to both the *International Convention on the Protection of All Persons from Enforced Disappearances*,<sup>8</sup> and the *Inter-American Convention on Forced Disappearance of Persons*.<sup>9</sup>

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<sup>1</sup> Acceded to by Mexico on 2 March 1981.

<sup>2</sup> Ibid.

<sup>3</sup> Acceded to by Mexico on March 23, 1981.

<sup>4</sup> Ratified by Mexico on November 12, 1998.

<sup>5</sup> Ratified by Mexico on March 23, 1981.

<sup>6</sup> Ratified by Mexico on February 11, 1987.

<sup>7</sup> Ratified by Mexico on January 23, 1986.

<sup>8</sup> G.A. res. 61/177, U.N. Doc. A/RES/61/177 (2006), adopted 20 December 2006, not yet in force, ratified by Mexico on March 18, 2008..

<sup>9</sup> Ratified by Mexico on February 28, 2002.

## II. THE INTERNATIONAL OBLIGATION ON STATES TO GUARANTEE HUMAN RIGHTS THROUGH THE EXERCISE OF DUE DILIGENCE TO PREVENT, INVESTIGATE AND PUNISH CERTAIN CONDUCT BY PRIVATE ACTORS

7. International human rights law not only requires States to refrain from violating human rights but also obliges them to guarantee those rights. Among other things this means that States must protect human rights in the sphere of activity by State authorities and agents, but also that they must take steps to protect rights in the context of conduct by private actors. Specifically States are required to exercise proper due diligence to prevent, investigate, and punish certain conduct by private actors that impairs the enjoyment of human rights.
8. The obligation to guarantee human rights, which is sometimes referred to as the obligation to *ensure* or *secure* those rights, is enshrined in international and regional human rights treaties,<sup>10</sup> including Article 1 of the *American Convention on Human Rights*. Its content and consequences, including the requirements it places on States in relation to preventing, investigating and punishing certain conduct by private actors, have been outlined and underscored repeatedly in the jurisprudence of both this Honourable Court<sup>11</sup> and many other international and regional judicial and quasi-judicial human rights bodies.<sup>12</sup>
9. Indeed in the words of this Honourable Court, “it is also necessary to ensure effective protection of human rights in relations amongst individuals. The State may be found responsible for acts by private individuals in cases in which, through actions or omissions by its agents when they are in the position of guarantors, the State does not fulfil these *erga omnes* obligations embodied in Articles 1(1) and 2 of the Convention.”<sup>13</sup> As such, “an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention [...] the State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment.”<sup>14</sup>

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<sup>10</sup> e.g. Article 2, International Covenant on Civil and Political Rights; Article 1, European Convention for the Protection of Human Rights and Fundamental Freedoms, entered into force September 3, 1953.

<sup>11</sup> e.g. Inter-American Court of Human Rights, *Case of Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988; *Case of the Mapiripan Massacre v. Colombia*, Judgment of 15 September 2005; *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of 31 January 2006.

<sup>12</sup> e.g. European Court of Human Rights, *Case of L.C.B. v. The United Kingdom*, Judgment 9 June 1998, Application No. 23413/94; *Case of Osman v. The United Kingdom*, Judgment 28 October 1998, Application No. 23452/94; *Case of E and Others v. The United Kingdom*, Judgment 26 November 2002, Application No. 33218/96; Human Rights Committee, General Comment No.31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 29 March 2004, UN Doc. CCPR/C/21/Rev.1/Add.13.

<sup>13</sup> Inter-American Court of Human Rights, *Case of the Mapiripan Massacre v. Colombia*, Judgment of 15 September 2005, Paras. 110-111. See also *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of 31 January 2006, Paras. 112-113.

<sup>14</sup> Inter-American Court of Human Rights, *Case of Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988, Para. 172.

10. The European Court of Human Rights has developed a similar doctrine of positive obligations. For example, as will be outlined in more detail below, in the context of their obligation to secure the rights to life and freedom from torture and inhuman and degrading treatment that Court has held that States are obliged to exercise due diligence to prevent and respond appropriately to, through investigation and prosecution, conduct by private actors that impairs those rights.<sup>15</sup>
11. Likewise, the African Commission on Human and Peoples' Rights has specified that, "governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement, but also by protecting them from damaging acts that may be perpetrated by private parties."<sup>16</sup>
12. Moreover the Human Rights Committee has found that States' obligations under the *International Covenant on Civil and Political Rights* entail similar responsibilities. It has held that "the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights [...] there may be circumstances in which a failure to ensure Covenant rights as required by article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."<sup>17</sup>
13. This approach has also been echoed by other international treaty monitoring bodies. For example in regard to States' obligations under the *Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* the Committee against Torture has held that "where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts."<sup>18</sup>
14. Furthermore the Committee on the Elimination of Discrimination Against Women has emphasized that "under general international law and specific human rights covenants States may also be responsible for private acts if they fail to act with due diligence to

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<sup>15</sup> European Court of Human Rights, *Case of Osman v. The United Kingdom*, Judgment 28 October 1998, Application No. 23452/94; *Case of Mahmut Kaya v. Turkey*, Judgment 28 March 2000, Application No. 22535/93; *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00; *Case of Kontrova v. Slovakia*, Judgment 31 May 2007, Application No. 7510/04; *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02; *Case of Z. and Others v. The United Kingdom*, Judgment 10 May 2001, Application No. 29392/95; *Case of E and Others v. The United Kingdom*, Judgment 26 November 2002; *Case of M.C. v. Bulgaria*, Judgment 4 December 2003, Application No. 39272/98; *Case of Bevaqua and S v. Bulgaria*, Judgment 12 June 2008, Application No. 71127/01.

<sup>16</sup> African Commission on Human and Peoples Rights, Communication No. 155/96, *Case of The Social and Economic Rights Action Center and the Center for Economic and Social Rights / Nigeria*, Para. 57.

<sup>17</sup> Human Rights Committee, General Comment No.31, Para. 8.

<sup>18</sup> Committee Against Torture, General Comment No.2, Implementation of Article 2 by States Parties, 24 January 2008, UN Doc. CAT/C/GC/2, Para.18.

prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.”<sup>19</sup>

15. Additionally the Committee on the Elimination of Racial Discrimination has noted that in accordance with the *International Convention on the Elimination of All Forms of Racial Discrimination*, “States parties are obliged to guarantee the right of every person within their jurisdiction to an effective remedy against the perpetrators of acts of racial discrimination, without discrimination of any kind, whether such acts are committed by private individuals or State officials, as well as the right to seek just and adequate reparation for the damage suffered.”<sup>20</sup>
16. Similarly the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has noted that crimes “carried out by individuals can also give rise to State responsibility in instances in which the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators as well as to address any attitudes or conditions within society which encourage or facilitate such crimes.”<sup>21</sup>
17. Indeed, this duty to prevent, investigate, prosecute and punish certain conduct by private persons which impairs human rights, closely reflects a long-standing and established principle of international law, according to which States have the duty to prevent, investigate and punish crimes. In one of the earliest existing jurisprudential precedents on the matter, given in 1925 in a case concerning claims by Great Britain for damages caused to British subjects in the Spanish part of Morocco, Professor Max Huber noted that, under international law, “State responsibility can arise [...] as a result of insufficient vigilance in preventing damaging acts as well as through insufficient diligence in criminally prosecuting the offenders. [...] It is generally recognized that repression of crime is not only a legal obligation incumbent on the competent authorities but also [...] an international duty incumbent on the State.”<sup>22</sup> Similarly, in the same year, in the *Janes Case*,<sup>23</sup> which concerned a claim by the United States of America, on behalf of relatives of an American citizen, in relation to the failure of the United Mexican States to apprehend his murderer, the Claims Commission made an award of compensation for the damage suffered by the relatives as a result of the ‘indignity’ caused by the failure to punish the murderer. Moreover, in the words of the International Law Commission’s Special Rapporteur on State Responsibility “in the case of a denial of justice, where the original wrong to the individual concerned was not itself attributable to the State, it maybe the successive failure of the police, the lower courts and any available appellate courts collectively to redress the grievance that amounts to a denial of justice. Such a “complex act” of the State, if it falls short of the relevant international standard, will involve a breach of international law.”<sup>24</sup>

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<sup>19</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No.19, Violence Against Women, U.N. Doc. A/47/38, Para. 9.

<sup>20</sup> Committee on the Elimination of Racial Discrimination, General Recommendation XXXI *on the Prevention of Racial Discrimination in the Administration and Functioning of the Criminal Justice System*, Para. 6.

<sup>21</sup> Extrajudicial, Summary or Arbitrary Executions - Report of the Special Rapporteur, Philip Alston, E/CN.4/2005/7, 22 December 2004, Para. 71.

<sup>22</sup> Recueil de sentences arbitrales [Reports of International Arbitral Awards], United Nations, Vol. II, pp. 645 and 646 [French original, free translation].

<sup>23</sup> Case *Laura M.B. Janes et al (USA) v the United Mexican States*, Award of 16 November 1925, Recueil de sentences arbitrales, Volume IV, p. 82.

<sup>24</sup> Second Report on State Responsibility, Mr. James Crawford, Special Rapporteur on State Responsibility, UN document A/CN.4/498, of 17 March 1999, para. 126.

### III. THE OBLIGATION TO EXERCISE DUE DILIGENCE IN RELATION TO THE RIGHT TO LIFE AND IN RELATION TO VIOLENCE AGAINST WOMEN

18. International human rights law imposes particularly strict and specific due diligence requirements on States in relation to protecting the right to life, and dealing with violence against women. These include: (i) ensuring an appropriate criminal-law framework is in place; (ii) ensuring that the appropriate law-enforcement and judicial mechanisms exist, such that the criminal-law framework offers effective protection in practice; (iii) taking specific operational preventative measures to (a) protect individuals whose lives are at risk from the criminal acts of other private actors, and (b) protect women who are at risk of gender-based violence, and (iv) carrying out an effective official investigation of both deprivations of the right to life and violence against women, with a view to prosecution and punishment of those responsible. These obligations exist independently of one another: where a State fulfils some of the requirements but not others it will be considered to have failed to comply with its obligation to exercise sufficient due diligence.<sup>25</sup>

#### The Right to Life

19. The obligation to exercise such due diligence has been repeatedly recognised as a consequence of the requirement on States to guarantee the right to life. Indeed in the words of this Honourable Court, “the right to life plays a fundamental role in the American Convention (...) active protection of the right to life by the State involves not only its legislators, but all State institutions, and those responsible for safeguarding security, whether they are members of its police forces or its armed forces. Consequently, States must adopt the necessary measures, not only at the legislative, administrative and judicial level, by issuing penal norms and establishing a system of justice to prevent, eliminate and punish the deprivation of life as a result of criminal acts, but also to prevent and protect individuals from the criminal acts of other individuals and to investigate these situations effectively.”<sup>26</sup>

20. Similarly the European Court of Human Rights has underlined that Article 2 of the European Convention on Human Rights, which enshrines the right to life, “ranks as one of the most fundamental provisions in the Convention,”<sup>27</sup> and therefore it “must subject allegations of breach of this provision to the most careful scrutiny.”<sup>28</sup> In the words of that Court the obligation to protect the right to life, “enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.”<sup>29</sup> States must “secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such

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<sup>25</sup> e.g. European Court of Human Rights, *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00, Para. 93.

<sup>26</sup> Inter-American Court of Human Rights, *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of 31 January 2006, Para. 120.

<sup>27</sup> European Court of Human Rights, *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00, Para.91.

<sup>28</sup> *Ibid.*

<sup>29</sup> European Court of Human Rights, *Case of L.C.B. v. The United Kingdom*, Judgment 9 June 1998, Application No. 23413/94, Para 36.

provisions.”<sup>30</sup> Moreover in certain circumstances there will also be “a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.”<sup>31</sup> Additionally, adequate protection of the right life requires that there be “an effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances.”<sup>32</sup>

21. Likewise the Human Rights Committee has held that the right to life, “is the supreme right,”<sup>33</sup> “of paramount importance,”<sup>34</sup> and States must take measures to prevent and punish deprivation of life by criminal acts, including by carrying out a “criminal investigation and consequential prosecution.”<sup>35</sup> Moreover it has specified that in order to comply with their obligations to protect the right to security of person States must not “ignore known threats to the life of persons under their jurisdiction”<sup>36</sup> and must “take reasonable and appropriate measures to protect them.”<sup>37</sup> The Committee has also underlined that States should, “take specific and effective measures to prevent the disappearance of individuals” and should “establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.”<sup>38</sup>

### **Violence Against Women**

22. As a matter of course these due diligence requirements also apply in relation to deprivations of the right to life of women, as a result of, or in the context of, acts of violence against women by private actors. Indeed this has been underlined and confirmed by the jurisprudence of the Committee on the Elimination of Discrimination Against Women,<sup>39</sup> and the European Court of Human Rights.<sup>40</sup> However, additionally, States are obliged under international human rights law to exercise due diligence to prevent, investigate and punish incidents of violence against

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<sup>30</sup> European Court of Human Rights, *Case of Osman v. The United Kingdom*, Judgment 28 October 1998, Application No. 23452/94, Para.115.

<sup>31</sup> *Ibid.* See also, *Case of Mahmut Kaya v. Turkey*, Judgment 28 March 2000, Application No. 22535/93, Para.85; *Case of Kontrova v. Slovakia*, Judgment 31 May 2007, Application No. 7510/04, Para.49; *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para.128.

<sup>32</sup> European Court of Human Rights, *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00, Para. 94.

<sup>33</sup> Human Rights Committee, General Comment No.6, *The Right to Life*, 30 April 1982, Para.1.

<sup>34</sup> *Ibid.* Para.3.

<sup>35</sup> Human Rights Committee, *Case of Marcellana & Gumanoy v. Philippines*, Communication No. 1560/2007, 17 November 2008, CCPR/C/94/D/1560/2007, Para. 7.2.

<sup>36</sup> Human Rights Committee, *Case of Delgado Paez v. Colombia*, Communication No. 195/1985, 12 July 1990, Para. 5.5; See Also, Human Rights Committee, *Case of Dias v. Angola*, Communication No. 711/1996, 20 March 2000, CCPR/C/68/D/711/1996, Para. 8.3 and *Case of Marcellana & Gumanoy v. Philippines*, 17 November 2008, Para. 7.6.

<sup>37</sup> *Ibid.*

<sup>38</sup> Human Rights Committee, General Comment No. 6, *The Right to Life*, 30 April 1982, Para. 4. Similarly Article 3 of the International Convention for the Protection of All Persons from Enforced Disappearances, holds that States must take appropriate measures to investigate acts constituting enforced disappearances when they are “committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.”

<sup>39</sup> Committee on the Elimination of Discrimination Against Women, *Case of Yildirim v. Austria*, Communication No.6/2005, 1 October 2007, Paras.12.1.1 – 12.4; Committee on the Elimination of Discrimination Against Women, *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Paras.12.1.1 – 12.4. See also, Committee on the Elimination of Discrimination Against Women, General Recommendation No.19, *Violence Against Women*, U.N. Doc. A/47/38.

<sup>40</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Paras. 128 – 151.

women by private actors, as a phenomenon in and of itself, whether or not impairments of a woman's right to life are at issue.

23. International human rights law, including the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*, defines violence against women as any conduct based on gender which causes death or physical, sexual or psychological harm or suffering to women.<sup>41</sup> The term is explicitly recognised as encompassing gender-based violence perpetrated by both State agents and by private actors<sup>42</sup> and, among other things, includes “physical, sexual and psychological violence that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping.”<sup>43</sup> Depending on the circumstances of a particular situation violence against women will involve impairments of any number of women's human rights, including for example, the right to life, the right to freedom from torture, inhuman and degrading treatment, the rights to liberty, security, privacy, as well as the right to the equal protection of the law, and to non-discrimination in the enjoyment of human rights.<sup>44</sup>
24. The due diligence obligation on States to prevent, investigate and punish violence against women has been enshrined in a number of international legal instruments and outlined repeatedly in the jurisprudence of international and regional judicial and quasi-judicial bodies. Indeed the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* requires that “by all appropriate means and without delay,”<sup>45</sup> States ensure the necessary penal-law framework to prevent, punish and eradicate violence against women is in place and “prevent, investigate and impose penalties for violence against women.”<sup>46</sup> Similarly the *Declaration on the Elimination of Violence Against Women* holds that States should “exercise due diligence to prevent, investigate and (...) punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”<sup>47</sup> Moreover, the Committee on the Elimination of Discrimination Against

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<sup>41</sup> Article 1, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*; Committee on the Elimination of Discrimination Against Women, General Recommendation No.19, *Violence Against Women*, U.N. Doc. A/47/38, Para. 6; Article 1, *Declaration on the Elimination of Violence Against Women*, 20 December 1993, General Assembly Resolution A/RES/48/104; See for a general discussion the Report of the Secretary General: In Depth Study on all Forms of Violence Against Women, 6 July 2006, U.N. Doc. A/61/122/add.1.

<sup>42</sup> Article 1, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*; Article 1, *Declaration on the Elimination of Violence Against Women*, 20 December 1993, General Assembly Resolution A/RES/48/104. See also, Committee on the Elimination of Discrimination Against Women, General Recommendation No.19, *Violence Against Women*, U.N. Doc. A/47/38, Para. 9, and see Article 1, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 13 September 2000, entered into force Nov. 25, 2005.

<sup>43</sup> Article 2(b), *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*; Article 2(b), *Declaration on the Elimination of Violence Against Women*, 20 December 1993, General Assembly Resolution A/RES/48/104.

<sup>44</sup> Articles 3 – 6, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*; Article 3, *Declaration on the Elimination of Violence Against Women*, 20 December 1993, General Assembly Resolution A/RES/48/104; Committee on the Elimination of Discrimination Against Women, General Recommendation No.19, *Violence Against Women*, U.N. Doc. A/47/38, Para. 7.

<sup>45</sup> Article 7, *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women*.

<sup>46</sup> *Ibid.*

<sup>47</sup> Article 4(c), *Declaration on the Elimination of Violence Against Women*, 20 December 1993, General Assembly Resolution A/RES/48/104. See also, United Nations Commission on Human Rights, Question of Integrating the Rights of Women into the Human Rights Mechanisms of the United Nations and the Elimination of Violence Against Women, Resolution 1994/45, which called on States to, “exercise due diligence to prevent, investigate and, in accordance with national legislation, to punish acts of violence against women and to take appropriate and effective action concerning



Women has held that Article 2 of the *Convention on the Elimination of All Forms of Discrimination Against Women* requires that States take preventative and protective measures in relation to violence against women.<sup>48</sup> The Committee has specified that States may be “responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence,”<sup>49</sup> and that they should “take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.”<sup>50</sup>

25. Furthermore the European Court of Human Rights has held that States’ obligations to protect the right to freedom from torture, inhuman and degrading treatment, the right to privacy, and the right to non-discrimination in respect of the enjoyment of human rights, require States to exercise due-diligence to prevent, investigate and prosecute violence against women.<sup>51</sup> For instance that Court has held that the obligation to protect the right to freedom from torture, inhuman and degrading treatment “requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture, or inhuman or degrading treatment, including such ill-treatment administered by private individuals.”<sup>52</sup> This in turn obliges States in certain circumstances to, “maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals,”<sup>53</sup> to take “reasonable steps to prevent ill-treatment,”<sup>54</sup> and where violence and ill-treatment does occur, “to conduct an official investigation.”<sup>55</sup> The Court has applied this principle to a variety of situations involving violence against women and has held States responsible for violations of the right of women to freedom from torture, inhuman and degrading treatment due to a failure to exercise the required due diligence. For example the Court has held that States are obliged “to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution.”<sup>56</sup> It has also held that vulnerable individuals, including women at risk of gender-based violence, “are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal

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acts of violence against women, whether those acts are perpetrated by the State or by private persons, and to provide access to just and effective remedies.”

<sup>48</sup> Committee on the Elimination of Discrimination Against Women, *Case of A.T. v. Hungary*, Communication No. 2/2003, 26 January 2005, A/60/38, Paras. 9.2 - 9.3.

<sup>49</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No.19, *Violence Against Women*, U.N. Doc. A/47/38, Para. 9.

<sup>50</sup> *Ibid.* Para. 24 (a).

<sup>51</sup> e.g. European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02; *Case of Bevaqua and S v. Bulgaria*, Judgment 12 June 2008, Application No. 71127/01; *Case of M.C. v. Bulgaria*, Judgment 4 December 2003, Application No. 39272/98; *Case of X and Y v. the Netherlands*, 26 March 1985, Application No. 8978/80.

<sup>52</sup> European Court of Human Rights, *Case of Z. and Others v. The United Kingdom*, Judgment 10 May 2001, Application No. 29392/95, Para.73; *Case of E and Others v. The United Kingdom*, Judgment 26 November 2002, Application No. 33218/96, Para.88; *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para.159. See also *Case of M.C. v. Bulgaria*, Judgment 4 December 2003, Application No. 39272/98, Para. 149.

<sup>53</sup> European Court of Human Rights, *Case of Bevaqua and S v. Bulgaria*, Judgment 12 June 2008, Application No. 71127/01, Judgment 12 June 2008, Para. 65.

<sup>54</sup> European Court of Human Rights, *Case of Z. and Others v. The United Kingdom*, Judgment 10 May 2001, Application No. 29392/95, Para.73; *Case of E and Others v. The United Kingdom*, Judgment 26 November 2002, Application No. 33218/96, Para.88.

<sup>55</sup> European Court of Human Rights, *Case of M.C. v. Bulgaria*, Judgment 4 December 2003, Application No. 39272/98, Para.151.

<sup>56</sup> *Ibid.* Para. 153.

integrity,<sup>57</sup> and that State authorities must take all reasonable measures to prevent such ill-treatment.<sup>58</sup>

26. Similarly as noted above the Committee Against Torture has underlined that where State authorities “know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors (...) the State bears responsibility.”<sup>59</sup> The Committee has explicitly underlined that this legal obligation to exercise due diligence to prevent, investigate, prosecute and punish acts of torture or ill-treatment by private actors applies to “gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking.”<sup>60</sup>
27. In addition, the United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences, and the United Nations Secretary General, have echoed the findings of all the aforementioned bodies. For example the Special Rapporteur has expressed the view that “both customary and conventional international law establish that States have due diligence obligations for preventing, responding to, protecting against and providing remedies for acts of violence against women whether such acts are committed by State or non-State actors,”<sup>61</sup> while the Secretary General has noted that “States’ obligations to respect, protect, fulfil 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.”<sup>62</sup>

#### **IV. THE OBLIGATION TO PREVENT DEPRIVATIONS OF THE RIGHT TO LIFE AND VIOLENCE AGAINST WOMEN**

28. As outlined in summary above, exercising sufficient due diligence to prevent impairments of the right to life by private actors and to prevent violence against women by private actors, requires States to ensure an effective protective legal framework is in place, to ensure its application in practice, and to take targeted operational preventative measures in specific instances to protect individuals at risk. The obligation is one of means rather than result: the question is whether, in the circumstances, the State did all that could reasonably have been expected of it to prevent lives from being avoidably put at risk and/or to prevent acts of violence against women. Additionally in the context of violence against women the obligation to prevent such violence also requires States to take broader long-term measures, including awareness raising and training, which target the community and society as a whole.

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<sup>57</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para.159. This case concerned the specific situation of women at risk of domestic violence.

<sup>58</sup> Ibid. Para.162: “the Court must next determine whether the national authorities have taken all reasonable measures to prevent the recurrence of violence attacks against the applicant’s physical integrity.”

<sup>59</sup> Committee Against Torture, General Comment No.2, *Implementation of Article 2 by States Parties*, 24 January 2008, U.N. Doc. CAT/C/GC/2, Para.18.

<sup>60</sup> Ibid.

<sup>61</sup> Special Rapporteur on Violence Against Women, Report to the Commission on Human Rights, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, 20 January 2006, U.N. Doc. E/CN.4/2006/61, Para. 30.

<sup>62</sup> Report of the Secretary General: In Depth Study on all Forms of Violence Against Women, 6 July 2006, U.N. Doc. A/61/122/add.1, Para.254.

## **Individuals At Risk: The Obligation to Take Reasonable Measures to Prevent Deprivations of the Right to Life and Violence Against Women**

29. The obligation to prevent harm and protect an individual whose life is at risk and/or who is at risk of acts of violence against women comes into play when a State knows, or should know, of the existence of the risk. Indeed in the words of this Honourable Court, the obligation to protect an individual or group of individuals whose life is in danger, is defined with reference to the State authorities' awareness "of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger."<sup>63</sup>
30. Similarly the European Court of Human Rights has noted that the first question to be addressed is whether the State authorities knew or ought to have known "of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party."<sup>64</sup> A violation of the obligation to protect the right to life will be found if given that knowledge the authorities then fail "to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk."<sup>65</sup>
31. Additionally, in the context of its considerations of whether or not a State has exercised the required due diligence to prevent the death of a woman as a result of gender based violence, the Committee on the Elimination of Discrimination Against Women has also held that the obligation to take preventative and protective measures comes into play because the "authorities knew or should have known"<sup>66</sup> of the "dangerous"<sup>67</sup> situation which the woman was in.<sup>68</sup>
32. It is also worthwhile recalling the jurisprudence of the Human Rights Committee, which has held that States cannot "ignore known threats to the life of persons under their jurisdiction"<sup>69</sup> but must "take reasonable and appropriate"<sup>70</sup> protective measures.
33. A similar approach applies in relation to situations of violence against women that do not necessarily raise questions related to the right to life. For example the European Court of Human Rights has held, in relation to the obligation to prevent violence by private actors that involves impairments of the right to freedom from torture, inhuman and degrading treatment, that States are required to take "reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge."<sup>71</sup> As

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<sup>63</sup> Inter-American Court of Human Rights, *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of 31 January 2006, Para.123.

<sup>64</sup> European Court of Human Rights, *Case of Osman v. The United Kingdom*, Judgment 28 October 1998, Application No. 23452/94, Para.116.

<sup>65</sup> Ibid.

<sup>66</sup> Committee on the Elimination of Discrimination Against Women, *Case of Yildirim v. Austria*, Communication No.6/2005, 1 October 2007, Para.12.1.4.

<sup>67</sup> Ibid.

<sup>68</sup> See also, Committee on the Elimination of Discrimination Against Women, *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Para.12.1.4.

<sup>69</sup> Human Rights Committee, *Case of Delgado Paez v. Colombia*, Communication No. 195/1985, 12 July 1990, Para.5.5; *Case of Dias v. Angola*, Communication No. 711/1996, 20 March 2000, Para.8.3; *Case of Marcellana & Gumanoy v. Philippines*, Communication No. 1560/2007, 17 November 2008, Para.7.6.

<sup>70</sup> Ibid.

<sup>71</sup> e.g. European Court of Human Rights, *Case of Z. and Others v. The United Kingdom*, Judgment 10 May 2001, Application No. 29392/95, Para.73; *Case of E and Others v. The United Kingdom*, Judgment 26 November 2002, Application No. 33218/96, Para. 88

noted above the Court has applied this obligation in situations where women are at risk of gender-based violence.<sup>72</sup>

### **Did the State Know or Should it Have Known of the Risk?**

34. Assessing whether or not State authorities know, or should know, of a real and immediate risk to the life of an identified individual and/or of a risk that a woman will be subject to acts violence against women turns on the specific facts of the particular situation in question. International and regional judicial and quasi-judicial bodies will consider the circumstances leading up to the events in question, including the specific situation of the individual at risk.<sup>73</sup> They will look at the extent to which the contours of this particular situation were known to the authorities, for example because of previous incidents brought to their attention and/or complaints or statements made directly to them about the situation of the victim.<sup>74</sup> However additionally they may consider whether, in light of more general circumstances at play, the authorities were on notice as to a general risk facing a particular group or class of persons, to which the individual in question belonged.<sup>75</sup>
35. This means that States need to consider the specific situation of an individual in light of more general circumstances. Indeed where, for example, specific facts concerning risks facing an individual woman are brought to a State's attention, in the context of a general situation in which women are facing heightened risks of gender-based violence, including deprivations of the right to life, the more likely it will be that the State will be considered to be on notice as to the specific and immediate risks facing that individual woman.

### **Did the State take Reasonable Legal and Operational Preventative Measures?**

36. In order to adequately protect an individual whose life is at risk and/or who is at risk of violence against women the State must take legal and operational preventative measures "consonant with the gravity of the situation."<sup>76</sup> In assessing whether a State failed to exercise sufficient due diligence to prevent a deprivation of the right to life, the European Court of Human Rights has held that it is not necessary to conclude "that matters would have turned out differently and that the killing would not have

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<sup>72</sup> See Paragraph 25 above.

<sup>73</sup> e.g. European Court of Human Rights, *Case of Mahmut Kaya v. Turkey*, Judgment 28 March 2000, Application No. 22535/93, Paras. 87 -92; European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Paras. 133 -136; European Court of Human Rights, *Case of Kontrova v. Slovakia*, Judgment 31 May 2007, Application No. 7510/04, Para. 52; Committee on the Elimination of Discrimination Against Women, *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Paras. 12.1.3 - 12.1.4; Committee on the Elimination of Discrimination Against Women, *Case of Yildirim v. Austria*, Communication No.6/2005, 1 October 2007, Paras. 12.1.3 – 12.1.4

<sup>74</sup> e.g. European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para. Paras. 133 -136; European Court of Human Rights, *Case of Kontrova v. Slovakia*, Judgment 31 May 2007, Application No. 7510/04, Para. 52; Committee on the Elimination of Discrimination Against Women, *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Paras. 12.1.3 - 12.1.4; Committee on the Elimination of Discrimination Against Women, *Case of Yildirim v. Austria*, Communication No.6/2005, 1 October 2007, Paras. 12.1.3 – 12.1.4

<sup>75</sup> e.g. European Court of Human Rights, *Case of Mahmut Kaya v. Turkey*, Judgment 28 March 2000, Application No. 22535/93, Paras. 89-90; European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para. 160

<sup>76</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Paras. 148 and 170;

occurred if the authorities had acted otherwise.”<sup>77</sup> That Court has applied a similar approach in assessing whether or not a State exercised sufficient due diligence to prevent ill-treatment by a private individual, noting that it is not necessary to show “that ‘but for’ the failing or omission (...) ill-treatment would not have happened.”<sup>78</sup> In both instances it will be sufficient to show “that the authorities did not do all that could be reasonably expected of them to avoid a real and immediate risk.”<sup>79</sup> This question can only be answered in the light of all the circumstances of any particular case.

37. There may be a wide range of acceptable operational measures or targeted legal measures relevant to the situation of an individual at risk which a State can undertake in order to comply with its obligation to exercise due diligence. However, sometimes the situation will require the State to undertake specific policing or administrative measures<sup>80</sup> and/or targeted protective legal measures (such as issuing injunctions, launching a criminal investigation).<sup>81</sup> Sometimes a State will be obliged to take steps that enable it to “discover the exact extent of the problem.”<sup>82</sup> Moreover, the timeliness and potential effectiveness of the authorities’ follow-up in relation to matters brought to their attention about the specific situation of the individual victim will be highly important factors in terms of compliance with due-diligence requirements.<sup>83</sup>
38. Additionally, when assessing whether or not a State undertook sufficient due diligence to prevent a deprivation of life and/or acts of violence against women, regional and international judicial and quasi-judicial bodies will also have regard to the general context at play. They will consider not only what measures the authorities did or did not take in relation to the specific and immediate situation confronting the concerned individual, but additionally, whether or not the general approach of the authorities towards a particular problem, situation or group or class of persons, in fact removed a level of protection from the individual victim concerned.<sup>84</sup> While questions as to whether or not an effective criminal law framework is in place will be asked in

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<sup>77</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para.136

<sup>78</sup> European Court of Human Rights, *Case of E and Others v. The United Kingdom*, Judgment 26 November 2002, Application No. 33218/96, Para. 99

<sup>79</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para.130. See also *Case of Osman v. The United Kingdom*, Judgment 28 October 1998, Application No. 23452/94, Para. 116 and *Case of E and Others v. The United Kingdom*, Judgment 26 November 2002, Application No. 33218/96, Para. 99

<sup>80</sup> e.g. European Court of Human Rights, *Case of Osman v. The United Kingdom*, Judgment 28 October 1998, Application No. 23452/94, Paras. 115 – 116; European Court of Human Rights, *Case of Bevaqua and S v. Bulgaria*, Judgment 12 June 2008, Application No. 71127/01, Para. 83; Committee on the Elimination of Discrimination Against Women, *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Para 12.1.4

<sup>81</sup> e.g. European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Paras 146 – 148, and *Case of Kontrova v. Slovakia*, Judgment 31 May 2007, Application No. 7510/04, Paras. 52 – 54

<sup>82</sup> European Court of Human Rights, *Case of E and Others v. The United Kingdom*, Judgment 26 November 2002, Application No. 33218/96, Para. 97

<sup>83</sup> e.g. European Court of Human Rights, *Case of Kontrova v. Slovakia*, Judgment 31 May 2007, Application No. 7510/04, Paras. 52-54; Committee on the Elimination of Discrimination Against Women, *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Paras. 12.1.3 – 12.1.4;

<sup>84</sup> e.g. European Court of Human Rights, *Case of Mahmut Kaya v. Turkey*, Judgment 28 March 2000, Application No. 22535/93, Paras. 92 – 99

this regard,<sup>85</sup> an equally important factor will be whether any such framework had a meaningful and tangible impact on the situation of the concerned individual.<sup>86</sup>

39. For example, the European Court of Human Rights has found that States have failed to comply with their due diligence obligation to prevent the deprivation of an individual's life, as a result of a general approach to a set of broader circumstances with which the individual victim's situation was linked. For instance the Court has held that a general failure to properly implement the criminal law in respect of a particular class of unlawful acts in turn undermined the effectiveness of the protection afforded by the criminal law, which thereby permitted or fostered a lack of accountability, so essentially removing a level of legal protection which the individual in question should have received.<sup>87</sup> Additionally, in another case, the Court has held that a State's failure to exercise due diligence to prevent acts of violence against women and resulting deprivations of women's lives, not only involved a violation of the rights to life and freedom from torture, inhuman and degrading treatment, but also of the right to enjoy those rights free from discrimination.<sup>88</sup> In reaching that decision the Court highlighted, "the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors,"<sup>89</sup> and found that it demonstrated "insufficient commitment to take appropriate action."<sup>90</sup>
40. Similarly in concluding that a State has failed to exercise sufficient due diligence to prevent violence against women and/or a deprivation of a woman's life, the Committee on the Elimination of Discrimination Against Women has considered whether a legal framework in place is in fact supported and implemented in practice by the relevant State actors.<sup>91</sup> Among other things, the Committee has taken into account the fact that cases concerning violence against women did "not enjoy high priority in court proceedings,"<sup>92</sup> and has noted the need for States to "vigilantly and in a speedy manner prosecute"<sup>93</sup> violence against women "in order to convey to offenders and the public that society condemns"<sup>94</sup> such violence.

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<sup>85</sup> e.g. Committee on the Elimination of Discrimination Against Women, *Case of A.T. v. Hungary*, Communication No. 2/2003, 26 January 2005, A/60/38, Para. 9.3; European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para. 145; *Case of X and Y v. the Netherlands*, 26 March 1985, Application No. 8978/80, Paras. 24 -30.

<sup>86</sup> e.g. Committee on the Elimination of Discrimination Against Women, *Case of Yildirim v. Austria*, Communication No.6/2005, 1 October 2007, Para. 12.1.2; *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Para. 12.1.2.; European Court of Human Rights, *Case of Mahmut Kaya v. Turkey*, Judgment 28 March 2000, Application No. 22535/93, Paras. 93- 99

<sup>87</sup> European Court of Human Rights, *Case of Mahmut Kaya v. Turkey*, Judgment 28 March 2000, Application No. 22535/93, Paras. 92 – 99

<sup>88</sup> Article 14, European Convention on Human Rights.

<sup>89</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para 200

<sup>90</sup> *Ibid.*

<sup>91</sup> Committee on the Elimination of Discrimination Against Women, *Case of Yildirim v. Austria*, Communication No.6/2005, 1 October 2007, Para. 12.1.2; *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Para. 12.1.2

<sup>92</sup> Committee on the Elimination of Discrimination Against Women, *Case of A.T. v. Hungary*, Communication No. 2/2003, 26 January 2005, A/60/38, Para 9.3

<sup>93</sup> Committee on the Elimination of Discrimination Against Women, *Case of Yildirim v. Austria*, Communication No.6/2005, 1 October 2007, Para. 12.3(b); *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Para. 12.3(b).

<sup>94</sup> *Ibid.* Both these cases concerned situations in which women were killed by domestic violence.

## **Preventing Violence Against Women: The Obligation to Take Broader Measures Targeting Society as a Whole**

41. In addition to the requirements analysed above, the obligation to prevent violence against women involves a broader dimension which requires States to take general community and society based measures to prevent violence against women. Of course in some respects aspects of this obligation will overlap with the obligations which apply in respect of specific women or groups of women at risk. For example, the requirements on States to ensure an effective criminal law framework is in place, that this framework is meaningful in practice to the situation of individuals at risk of violence and that acts of violence against women are investigated and prosecuted, are relevant to both the obligation to protect individual women at risk and the obligation to take broader society-based measures. However the obligation to take broader society-based measures also imposes additional requirements on States in relation to preventing violence against women.<sup>95</sup> For example it requires that States: provide appropriate training to judges, lawyers and law enforcement officials,<sup>96</sup> ensure enhanced coordination among law enforcement and judicial officers,<sup>97</sup> provide for sanctions for state authorities' failure to prevent and respond appropriately to violence against women,<sup>98</sup> provide victims with safe and prompt access to justice and remedies and rehabilitation,<sup>99</sup> undertake public education programmes<sup>100</sup> and collect accurate information and statistics on violence against women.<sup>101</sup>

## **V. THE OBLIGATION TO INVESTIGATE IMPAIRMENTS OF THE RIGHT TO LIFE, AND ACTS OF VIOLENCE AGAINST WOMEN, WITH A VIEW TO PROSECUTION**

42. As outlined above, the due diligence obligation on States to protect the right to life and to protect women from acts constituting violence against women not only obliges States to take measures to prevent certain conduct by private actors, but also requires States to respond appropriately to such conduct, through an effective official investigation, which is capable of leading to prosecution and punishment of those responsible.

43. As this Honourable Court has held, “the State is obliged to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus

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<sup>95</sup> See generally, Report of the Special Rapporteur on Violence Against Women, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, 20 January 2006, U.N. Doc. E/CN.4/2006/61; Report of the Special Rapporteur on Violence Against Women, *Indicators on Violence Against Women and State Response*, 29 January 2008, U.N. Doc. A/HRC/7/6; Report of the Secretary General: In Depth Study on all Forms of Violence Against Women, 6 July 2006, U.N. Doc. A/61/122/add.1, Para. 284

<sup>96</sup> Committee on the Elimination of Discrimination Against Women, *Case of A.T. v. Hungary*, Communication No. 2/2003, 26 January 2005, A/60/38, Para. 9.6(II); *Case of Yildirim v. Austria*, Communication No.6/2005, 1 October 2007, Para. 12.3(d); *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Para. 12.3(d).

<sup>97</sup> Committee on the Elimination of Discrimination Against Women, *Case of Yildirim v. Austria*, Communication No.6/2005, 1 October 2007, Para. 12.3(c); *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Para. 12.3(c).

<sup>98</sup> Committee on the Elimination of Discrimination Against Women, *Case of Yildirim v. Austria*, Communication No.6/2005, 1 October 2007, Para. 12.3(a); *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Para. 12.3(a).

<sup>99</sup> Committee on the Elimination of Discrimination Against Women, *Case of A.T. v. Hungary*, Communication No. 2/2003, 26 January 2005, A/60/38, Para. 9.6(II)

<sup>100</sup> Report of the Secretary General: In Depth Study on all Forms of Violence Against Women, Para. 284

<sup>101</sup> *Ibid.*

acts in such a way that the violation goes unpunished and the victims full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognised by the Convention.”<sup>102</sup> This Honourable Court has underscored the particular importance of the obligation to investigate in the context of effectively protecting the right to life<sup>103</sup> noting that carrying out an effective investigation is vital to protect the right to life, “regardless of what agent is eventually found responsible for the violations. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.”<sup>104</sup>

44. The European Court of Human Rights has echoed these findings, holding for example that the due diligence obligation to protect the right to life and the right to freedom from torture, inhuman and degrading treatment requires that States carry out an official investigation.<sup>105</sup> It has specified that States must undertake “an effective official investigation when there is reason to believe that an individual has sustained life-threatening injuries in suspicious circumstances,”<sup>106</sup> and has underlined that, “where death results (...) the investigation assumes even greater importance, having regard to the fact that the essential purpose of such an investigation is to secure the effective implementation of the domestic laws which protect the right to life.”<sup>107</sup> It has confirmed that this obligation applies not only when injury was caused by a State agent, or with State involvement, but equally when the conduct of private actors is at fault,<sup>108</sup> and has applied the obligation in cases concerning violence against women.<sup>109</sup>
45. Similarly as noted previously the Human Rights Committee has stated that States must exercise due diligence to investigate and punish the harm caused due to certain acts by private persons<sup>110</sup> and has held that in order to protect the right to life, in cases of suspected murder, an investigation, and where appropriate, consequential criminal prosecution, should be initiated.<sup>111</sup> It has also specifically underlined that States are obliged to “establish effective facilities and procedures to investigate thoroughly

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<sup>102</sup> Inter-American Court of Human Rights, *Case of Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988, Para. 176

<sup>103</sup> Inter-American Court of Human Rights, *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of 31 January 2006, Para. 143 “In particular, since full enjoyment of the right to life is a prior condition for the exercise of all the other rights, the obligation to investigate any violations of this right is a condition for ensuring this right effectively.”

<sup>104</sup> Inter-American Court of Human Rights, *Case of Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988, Para. 177. See also *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of 31 January 2006, Para. 145

<sup>105</sup> European Court of Human Rights, *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00, Para. 94; *Case of M.C. v. Bulgaria*, Judgment 4 December 2003, Application No. 39272/98, Para. 151, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para. 150

<sup>106</sup> *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00, Para. 94

<sup>107</sup> *Ibid.*

<sup>108</sup> European Court of Human Rights, *Case of Yasa v. Turkey*, 2 September 1998, Application No. 22495/93, Para. 100; *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00, Para. 98

<sup>109</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Paras. 150 – 151, *Case of M.C. v. Bulgaria*, Judgment 4 December 2003, Application No. 39272/98, Para. 151 and 153: “States have a positive obligation inherent in Articles 3 and 8 of the Convention to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation and prosecution.”

<sup>110</sup> Human Rights Committee, General Comment No.31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, Para. 8

<sup>111</sup> Human Rights Committee, *Case of Marcellana & Gumanoy v. Philippines*, Communication No. 1560/2007, 17 November 2008, CCPR/C/94/D/1560/2007, Para.7.2-7.4



cases of missing and disappeared persons which may involve a violation of the right to life.”<sup>112</sup>

46. Moreover the Committee on the Elimination of Discrimination Against Women has held that in order to comply with the obligation to exercise due diligence in respect of violence against women, States should investigate allegations of such violence “promptly, thoroughly, impartially and seriously,”<sup>113</sup> and should “vigilantly and in a speedy manner”<sup>114</sup> prosecute those responsible.

### **What Constitutes an Effective Official Investigation Capable of Leading to Prosecution and Punishment?**

47. An investigation must fulfil certain criteria in order to meet the requirements of the obligation to investigate. In the words of this Honourable Court the obligation requires that the investigation be effective, genuine, immediate, impartial, serious, and assumed by the State as its own legal duty.<sup>115</sup> Notably this Honourable Court has recognised that although undertaking such an investigation may be difficult,<sup>116</sup> neither this, nor difficult conditions generally at play in the Country in question,<sup>117</sup> will liberate the State from its obligation to investigate.<sup>118</sup> While the obligation is one of means rather than result, and does not require that the investigation be successful, it must be capable of leading to proceedings against those responsible for unlawful acts, pertinent punishments being imposed, and the truth about what happened being revealed, all of which must take place within a reasonable time.<sup>119</sup>
48. The European Court of Human Rights has outlined similar criteria. It has underlined that “the authorities must act of their own motion once the matter has come to their attention,”<sup>120</sup> and that there is a requirement of “promptness and reasonable expedition”<sup>121</sup> in relation to an investigation. For example, in a case concerning the death of a woman due to acts of gender-based violence the Court has specified that although, “it must be accepted that there may be obstacles or difficulties which prevent progress in an investigation (...) a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing

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<sup>112</sup> Human Rights Committee, General Comment No.6, *The Right to Life*, Para. 4

<sup>113</sup> Committee on the Elimination of Discrimination Against Women, *Case of A.T. v. Hungary*, Communication No. 2/2003, 26 January 2005, A/60/38, Para. 9.6(II)(f)

<sup>114</sup> Committee on the Elimination of Discrimination Against Women, *Case of Yildirim v. Austria*, Communication No.6/2005, 1 October 2007, Para. 12.3(b); *Case of Goekce v. Austria*, Communication No. 5/2005, 6 August 2007, Para. 12.3(b)

<sup>115</sup> Inter-American Court of Human Rights, *Case of Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988, Para. 177; *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of 31 January 2006, Para. 143; *Case of the Mapiripan Massacre v. Colombia*, Judgment of 15 September 2005, Para. 219, and see also *Case of the 19 Tradesmen v. Colombia*, Judgment of 5 July 2004, Para. 184

<sup>116</sup> Inter-American Court of Human Rights, *Case of Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988, Para. 177

<sup>117</sup> Inter-American Court of Human Rights, *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of 31 January 2006, Para. 146

<sup>118</sup> *Ibid.*

<sup>119</sup> Inter-American Court of Human Rights, *Case of the 19 Tradesmen v. Colombia*, Judgment of 5 July 2004, Paras. 187 – 188

<sup>120</sup> European Court of Human Rights, *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00, Para. 96

<sup>121</sup> *Ibid.* Para.97. See also, *Case of M.C. v. Bulgaria*, Judgment 4 December 2003, Application No. 39272/98, Para. 184

any appearance of tolerance of unlawful acts.”<sup>122</sup> Additionally, the European Court has noted that carrying out an effective investigation requires, “a context-sensitive assessment (...) and verification of all the surrounding circumstances.”<sup>123</sup> It involves taking reasonable steps “to secure the evidence concerning the incident, including, inter alia, eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings including the cause of death.”<sup>124</sup>

49. Like this Honourable Court, the European Court has also expressed the view that the obligation to investigate is one of means rather than result, but that nonetheless an investigation must be carried out with the necessary diligence and determination for there to be a realistic prospect of establishing the cause of injury, and identifying and apprehending those responsible, with a view to their punishment.<sup>125</sup> All “available possibilities for establishing all the surrounding circumstances”<sup>126</sup> must be explored, no possible explanations must be excluded and the outcome must not be prejudged.<sup>127</sup> Indeed “any deficiency in the investigation which undermines its ability to establish the cause of death, or the person or persons responsible will risk falling foul of this standard.”<sup>128</sup> Even where “the prevailing climate”<sup>129</sup> at play in a particular region, may impede “the search for conclusive evidence in the domestic criminal proceedings. Nonetheless, circumstances of that nature cannot relieve the authorities of their obligations (...) to carry out an investigation, as otherwise that would exacerbate still further the climate of impunity and insecurity in the region and thus create a vicious circle.”<sup>130</sup> Moreover the Court has specified that even where a comprehensive investigation is carried out and the perpetrators identified, compliance with the obligation to exercise due diligence will often require the initiation of criminal proceedings, in a timely manner.<sup>131</sup>
50. Additionally, it is important to note that the obligation to carry out an effective official investigation with a view to prosecution may have an added dimension when injury or death is caused to a woman in the context of acts of violence against women. For example the European Court has held that where a life-threatening attack on an individual “is racially motivated, it is particularly important that the investigation is pursued with vigour and impartiality, having regard to the need to reassert

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<sup>122</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para. 150. See also *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00, Para. 97

<sup>123</sup> European Court of Human Rights, *Case of M.C. v. Bulgaria*, Judgment 4 December 2003, Application No. 39272/98, Para. 177

<sup>124</sup> European Court of Human Rights, *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00, Para. 95

<sup>125</sup> European Court of Human Rights, *Case of Mahmut Kaya v. Turkey*, Judgment 28 March 2000, Application No. 22535/93, Para. 108, *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00, Para. 94-98

<sup>126</sup> European Court of Human Rights, *Case of M.C. v. Bulgaria*, Judgment 4 December 2003, Application No. 39272/98, Para. 178

<sup>127</sup> European Court of Human Rights, *Case of Yasa v. Turkey*, 2 September 1998, Application No. 22495/93, Paras 105 – 107

<sup>128</sup> European Court of Human Rights, *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00, Para. 95

<sup>129</sup> European Court of Human Rights, *Case of Yasa v. Turkey*, 2 September 1998, Application No. 22495/93, Para. 104

<sup>130</sup> Ibid.

<sup>131</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para. 151: “the criminal proceedings in question, which have already lasted more than six years, cannot be described as a prompt response by the authorities in investigating an intentional killing.” See also, *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00, Paras. 100 - 103

continuously society's condemnation of racism."<sup>132</sup> In a similar vein, violence against women is a form of discrimination against women.<sup>133</sup> In this context the obligation to exercise due diligence in respect of violence against women, and specifically to investigate and prosecute violence against women in accordance with international standards, takes on a particular importance in relation to combating impunity and breaking a perpetual cycle of violence against women.<sup>134</sup> Indeed in the words of the Committee Against Torture, "since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence."<sup>135</sup>

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<sup>132</sup> European Court of Human Rights, *Case of Angelova and Iliev v. Bulgaria*, Judgment 26 July 2007, Application No. 55523/00,, Para. 98

<sup>133</sup> European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para. 200; Article 6, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; Committee on the Elimination of Discrimination Against Women, General Recommendation No.19, *Violence Against Women*, U.N. Doc. A/47/38, Para. 1.

<sup>134</sup> e.g. see again European Court of Human Rights, *Case of Opuz v. Turkey*, Judgment 9 June 2009, Application No. 33401/02, Para 200: "the Court considers that the violence suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, as found in the instant case, indicated that there was insufficient commitment to take appropriate action to address domestic violence."

<sup>135</sup> Committee Against Torture, General Comment No.2, *Implementation of Article 2 by States Parties*, 24 January 2008, U.N. Doc. CAT/C/GC/2, Para. 18.