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## **Respect, protect, fulfil - Women's human rights State responsibility for abuses by 'non-state actors'**

*...The main woman we talked to was about 55 years old, she looked old. She had got married at 13 or 14, bore four children till her husband died when she was nearly 20. She was resigned to her lot but said "we are not alive and not dead". Four of the women, now in their middle ages, were born in this family compound, suitable cousins could not be found for them so they live their lives within the walls. They have a radio, but much of what they hear is incomprehensible to them. My woman-teacher escort told me that years ago, a donkey had wandered in through the half-open gate of the compound and the women had flown into a panic as they had never seen such a creature. An old pale woman was crying in the background, she wanted to say something but the others felt embarrassed and wanted to keep her in the background. She was slightly deranged with pain in her abdomen; there were no medicines and she was afraid of it getting worse or dying in pain, her daughter told us.*

This extract from an Amnesty International mission report is a powerful testimony of the enormous gap between the rhetoric of human rights for women and the reality so many women experience everyday. It also illustrates in an extreme way the failure of the human rights law system, in far too many cases, to ensure women's enjoyment of their rights and fundamental freedoms.

Part of the failure is that the application of human rights law to women is often misunderstood or interpreted too narrowly. In particular, the responsibility of states for acts which impair the rights of women is sometimes mistakenly perceived as applying only when state agents or officials are the actual perpetrators. The protection afforded by human rights law is far greater. There is a clear responsibility on states under international law which extends beyond violations by those acting on behalf of the state and its organs.

On the occasion of the five year review of the implementation of the Beijing platform for Action, Amnesty International is publishing this report as a contribution towards strengthening the system for the protection of women's human rights. A better understanding by states, and by women themselves, is essential if women world-wide are to be able to claim their rights fully and freely.

In 1995, over 17,000 delegates representing governments and civil society from across the world, including women's groups and non-governmental organizations (NGOs), assembled in Beijing, China, for a World Conference to review progress regarding 'the goals of equality, development and peace for all women everywhere in the interest of all humanity'.

The Beijing Declaration, which with the Platform for Action, constitutes the final document of the Fourth World Conference on Women, reaffirmed the declaration in the 1993 Vienna World Conference on Human Rights that the 'human rights of women are an inalienable, integral and indivisible part of universal human rights'. It urged that the full and equal enjoyment by women of all human rights should be a priority for governments and the United Nations (UN). The focus on the human rights of women at the two world conferences highlighted the need to tackle violations of the human rights of women wherever they occur and whoever the perpetrator is. This meant recognising that state responsibility under international law extends to abuses committed by private groups or individuals and that states have a positive responsibility to take effective action to stop abuses of women's human rights.

To translate the promises of Beijing into reality, the Beijing Platform for Action called on states to fulfil their obligations under international law and on international organisations to assist, including the UN system and non-governmental organisations. There is a clear responsibility on states under international law, which extends beyond violations by those acting on behalf of the state and its organs, such as police officers, military personnel and security forces. The application of human rights law to women is often misunderstood or interpreted too narrowly. In particular, the responsibility of states for acts which impair the rights of women is sometimes mistakenly perceived as applying only when state agents or officials are the actual perpetrators of the acts.

## **I. Human rights law and how it applies to women**

The UN Charter affirms 'the equal rights of men and women', 'the dignity and worth of the human person' and the realisation of fundamental human rights as the UN's core principles and objectives of the organisation. These principles have been further articulated through the adoption of international legal standards and binding treaties setting out the obligations of governments to secure human rights for individuals within their territory and subject to their jurisdiction 'without distinction of any kind'.<sup>1</sup> Indeed the right not to be discriminated against is so fundamental that it is one of the rights that cannot be set aside (derogated from) in any circumstances.

These treaties and standards, and the mechanisms and institutions created to enforce them, form the international human rights law system which applies equally to men and women. This international system works to ensure the implementation of human rights in the national systems of states and, with national mechanisms, to monitor their implementation.

The core human rights treaties which flow from the 1948 Universal Declaration of Human Rights (UDHR) include:

- the Convention on the Elimination of Racial Discrimination (CERD);
- the International Covenant on Economic, Social and Cultural rights (ICESCR);
- the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols;
- the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention) and its Optional Protocol;
- the Convention against Torture (CAT);
- the Convention on the Rights of the Child (CRC).

In addition to being a contract between states, human rights treaties also provide a framework of rights that individuals are entitled to claim at national, and in some cases international level. These treaties detail the obligations that the state undertakes to fulfil when it ratifies (or agrees to be bound by) the treaty in question. <sup>2</sup>

**Human rights treaties spell out the obligations of the State, including:**

- to promote those rights,
- to secure those rights for all and translate them into policies and strategies,
- to prevent violations of the rights under the Convention and
- to provide remedies to the victims should their rights be violated.

These obligations are to be fulfilled not only in relation to acts by individuals who act on behalf of the state or at its instigation or with its consent or acquiescence, but in relation to any acts by individuals, groups or institutions which impair the rights of others.

Some of the international treaties and standards are specific to women, such as the Women's Convention, the Optional Protocol to the Women's Convention, and the Declaration on the Elimination of Violence Against Women. However, each of the human rights treaties and the whole framework of human rights apply to, and are essential, for the realisation of women's human rights.

Because of their historical subordination, many laws, policies and practices constrain women's lives and hinder their full participation in public life. Thus women often face abuses not only at the hands of state officials but at the hands of individuals known to them as employers, partners, husbands, family members or neighbours. Applying international human rights law without understanding the responsibility of the state for the abuses by these private actors simply robs women of protection and of remedies for the majority of abuses against

them. Human rights law is not silent on these abuses. It clearly points to a positive responsibility on the part of the state. But this responsibility has too often been overlooked and too often misunderstood or simply not enforced. Yet that responsibility forms an essential part of the protection that the human rights system is supposed to avail to women.

## 2. Respect, Protect and Fulfil: The responsibility of States under human rights law

The obligations of states under international human rights law are often summarised under three categories: 'respect, protect, fulfil'.<sup>3</sup>

The obligation *to respect* focuses directly on what the government does through its organs, agents and the structures of its law. Is there a constitutional provision for equality between men and women in all spheres? Does the law restrict some employment to men? Do some agents of the state such as the police, regularly sexually assault and extort money from prostitutes with impunity? Does the state compel women to be sterilised as part of a population reduction policy? Does it deny information on contraception to adolescent girls in the name of respecting a dominant cultural or religious claim?

The State is also required to *protect* women's human rights. This principle 'requires from the state and its agents measures necessary to prevent other individuals or groups from violating the integrity, freedom of action, or other human rights of the individual'. By this, the state has undertaken, for example, to prevent acts of direct and indirect discrimination against women. This could include preventing discriminatory acts that restrict women and girls from going to school by allowing sexual harassment to continue unabated, or to ensure that a woman is not deprived of equal rights to employment by giving her husband the power to veto her employment contract.

The obligation *to fulfil* 'requires the state to take the measures necessary to ensure, for each person within its jurisdiction, opportunities to obtain satisfaction of those needs, recognised in the human rights instruments, which cannot be secured by personal efforts'. This obligation for women and men covers everything from providing a healthy environment and clean water to, more generally, upholding the conditions necessary for women's NGOs to form and function.

### 3. The responsibility of states for abuses by non-state actors

Traditionally, public international law mostly talked to and about national governments or states. It has never, however, focussed solely on states. International treaties to end slavery, for example, prohibited actions by individuals like slave traders. But the need to look beyond the state or its agents as the primary subject of international law and the sole possible actor capable of impairing the enjoyment of the human rights of others, requires a term that captures the very many different kinds of 'individuals, groups or institutions' whose behaviour, actions or policies have an effect on human rights, and who can either be directly called to answer by the international system or for whom the government will be called to answer.

The term 'non-state actor' encompasses people and organisations acting outside the state, its organs and its agents.<sup>4</sup> It is not limited to people since some perpetrators of human rights abuses are corporations or other structures of business and finance, as the research on the human rights impacts of oil production or the development of power facilities demonstrates.<sup>5</sup> On the other hand, in some cases the state's responsibility begins with the act of an individual - the violent husband, for example, who rapes his wife and cannot be prosecuted because the law in the country only criminalises rape outside of marriage.

Under international law, the state has clear responsibilities for human rights abuses committed by non-state actors.<sup>6</sup> Internationally, the state is accountable in a number of specific ways. It can be deemed responsible for carrying out the human rights violation because of a specific kind of *connection* with the non-state actors; or it can be responsible for its *failures to take reasonable steps* to prevent or respond to an abuse.

**The state may be responsible when it relies on someone or something to carry out an action that falls within the role of a state.** For example, only a government can lawfully deprive a person of liberty. However, states are increasingly contracting out police and detention powers to private corporations, and many women confined by these actors have faced sexual and other forms of gender violence, or have been denied adequate mental and physical health care. In these cases, there is no doubt that the state cannot avoid its responsibilities by delegating them away. In looking at healthcare and housing, the Committee on the Elimination of Racial Discrimination noted that protection of rights 'may be achieved in different ways, be it by the use of public institutions or through the activities of private institutions. In any case, it is the obligation of the State Party concerned to ensure the effective implementation of the Convention [...]. To the extent that private institutions influence the exercise of rights or the availability of opportunities, the State Party must

ensure that the result has neither the purpose nor the effect of creating or perpetuating racial discrimination'.<sup>7</sup>

**The state may be responsible when it has 'participated' in some way, or supported abuses by others.** The Convention against Torture, for example, establishes the responsibility of the state for an act of torture 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' [Article 1]. When has a state consented or acquiesced? Amnesty International has described cases of such persistent official failure to conduct criminal prosecutions for crimes that it may amount to deliberate permissiveness. Other NGOs have documented continuing police or border guard corruption facilitating the coercion of women into exploitative work situations, and in some cases, forcing them to return to such situations.

**The state may be responsible when it does not provide effective remedies.** Under international law, a core obligation of the state is to provide effective remedies for human rights abuses regardless of the identity of the abuser. Broad principles set out what 'effective remedies' are, including the fact that the remedy must match the nature and severity of the harm (*proportionate*); it must be accessible without discrimination to those harmed (this often means positive steps by the state to reach out to marginalised groups, such as providing legal services in rural areas or in local languages). An effective remedy has many gender-specific aspects: Do women and men have equal rights and real-life capacities to go to court to obtain redress? Does a woman's testimony have the same weight, by law and in practice, as a man's? Is the nature of the remedy sufficient and appropriate to match the gender-specific harm?

## 4. How state responsibility for abuses by non-state actors works

### The standard of due diligence

International law has developed more than one approach for holding the state responsible for abuses by non-state actors, since very different kinds of relationships between abusers and the state arise. The established standard of *due diligence* (developed through state practice and also through the global commitments made at the world conferences, including the Beijing conference) provides a way to measure whether a state has acted with sufficient effort and political will to fulfil its human rights obligations.<sup>8</sup>

Under this obligation states must prevent, investigate and punish acts which impair any of the rights recognised under international human rights law. Moreover, if possible, it must attempt to restore the right violated and provide appropriate compensation for resulting damages. The standard of *due diligence* has been explicitly incorporated into United Nations standards<sup>9</sup>, such as the Declaration on the Elimination of Violence against Women which says that states should 'exercise due diligence to prevent, investigate and, in accordance with national legislation<sup>10</sup>, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons'<sup>11</sup>. Increasingly, UN mechanisms monitoring the implementation of human rights treaties, the UN independent experts, and the Court systems at the national and regional level are using this concept of due diligence as their measure of review, particularly for assessing the compliance of states with their obligations to protect bodily integrity.<sup>12</sup>

The concept of *due diligence* is a way to describe the threshold of action and effort which a state must demonstrate to fulfil its responsibility to protect individuals from abuses of their rights. A state cannot, for example, avoid responsibility for the mistreatment of domestic workers by arguing that the abuse took place in the privacy of the employer's home, or that it is justified by social or cultural practices. A range of measures is open to a state to take to ensure the rights of women and men are respected; no specific course of action is prescribed. State practice in different legal, economic and cultural systems is examined, consensus develops around the key measures to reach this standard and states are evaluated on whether the choices made are adequate, including how a state has used its resources.<sup>13</sup> In relation to violence against women, evidence of steps states should take can be found in the concluding comments of the treaty bodies responding to specific state reports; the UN Declaration on Violence against Women, and the Platform for Action of the Fourth World Conference on Women.

*The Declaration on the Elimination of Violence against Women was adopted by the UN General Assembly on the 20 December 1993. It declares that states must : '(d) develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress wrongs caused to women who are subjected to violence; ...[provide] access to mechanisms of justice, and as provided for in national legislation, to just and effective remedies for the harm they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;... (f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimisation of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions; (g) Work to ensure, to the maximum extent feasible in the light of their available resources, and when needed in the framework of international cooperation... [including] rehabilitation, assistance in child care and maintenance, treatment, counselling, and*

*health and social services; ... (i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitise them to the needs of women.*'<sup>14</sup>

The specific acts included within concepts of due diligence, like all international law principles, can grow and be elaborated through state practice, decisions of courts (*jurisprudence*), and the opinions of experts. For example, governments, NGOs and the independent experts of the UN human rights system have identified that abuses directed at persons because of their sexuality, or legal protections that are denied because of a woman's sexual life must be considered in assessing whether a state has fulfilled its duty to protect all persons from violations of their bodily integrity.<sup>15</sup>

## 5. Holding non-state actors directly responsible

### **The limits of the reach of state responsibility.**

*International humanitarian law applies to the conduct of all parties to armed conflicts. The international human rights legal framework can also apply to the state and all of its agents - including the security forces - in time of armed conflict. Under both set of laws, the state is accountable for the actions of armed groups that work in association with or are tolerated by it - for example, as paramilitary groups, militias, death squads or vigilantes. But at some point, it becomes more difficult to hold the state responsible for acts by armed groups - at what point does the state's responsibility cease and what are the standards that govern the behaviour of the armed groups? The question of when the state is responsible for abuses by armed groups is under active discussion.<sup>16</sup> Commentators stress that the overall principle must be that no abuses, regardless of what 'box' of international law the status of the conflict falls within (peace time, international armed conflict, internal armed conflict, civil strife etc), should fall outside from structures of accountability and response.*

*Responsibility for gender-specific abuses committed in armed conflicts such as sexual violence and slavery, has been increasingly applied under international law. Non-state actors as parties to an internal or international armed conflict are being held accountable for such abuses. The UN Special Rapporteur on Systematic Rape, Sexual Slavery and Slavery-like practices during armed conflict has noted that abduction, enslavement, forced temporary marriages, rape and other forms of sexual violence committed by armed groups in such countries as Algeria, Myanmar, Haiti, Peru, Sierra Leone and Uganda should be fairly investigated and punished under international*

*legal structures, as well as national structures. An important development has been the adoption in 1998 of the Statute of the International Criminal Court. When established, the court will have the potential to bring individual perpetrators of these gender based abuses to justice regardless of whether they are state or non state actors.*

In focussing on when the state fails to protect people from harm by others and how it can be held to share responsibility with those who commit the harm, it is important not to overlook the original abuser's responsibility. Holding state's responsible must be seen in relation to other moves to hold non-state actors directly accountable for human rights abuses nationally and internationally. Developments, such as the International Criminal Court have increased the capacity of international law to directly hold individual perpetrators accountable for crimes under international law, such as genocide, crimes against humanity, and war crimes, wherever he or she may be located. In every case, while holding states responsible at certain times for abuses by non-state actors, it is important not to divert attention from the original perpetrator - the rapist must still be fairly tried and punished, and the corporation must still be held to account for its discriminatory practise. The international human rights system provides another tool to shore up accountability and obligations to promote rights at the local level but it is not a replacement for national systems.

International law's treatment of abuses by non-state actors is a central focus of many different movements in human rights, including those focussing on labour, indigenous peoples, sexual orientation, health issues such as HIV/AIDS, as well as the environment. While this paper focuses on building the argument for state responsibility for abuses committed against women, an understanding of the nature of this responsibility is central to anyone working to promote and protect the full range of rights for both women and men - civil, cultural, economic, political and social.

## **6. What does state responsibility for abuses by non-state actors means in practice for women**

In many rural areas around the world, local community leaders caution women that voting - including travelling to distant polling places - is dangerous and exercising this right is an act of rebellion against male heads of households. These husbands and fathers believe it is acceptable for them to vote on behalf of the women in the family, and that they have the right to enforce this practice by violence. In this case, for a woman to exercise a classic civil right, such as voting, protective steps must be taken to stop violence in the home, change local community attitudes and empower women to exercise their right. This example also

demonstrates the fundamental principle of the indivisibility of rights, of how rights are 'interconnected' in the way they are realised.

When the treaty bodies assess whether, in the specific country under review in a specific treaty, or when the UN Special Rapporteur on Violence against Women, its Causes and Consequences applies a standard of due diligence to the state in this case, they will look at some of the following concerns. Has the state directly limited the women's rights to vote, i.e. are these community leaders representing the government or carrying out any of its functions around elections? Are they directly involved in any of the violence, including through complicity or acquiescence? If not, and the local community actors and the family men are not connected to the state, what steps has the state taken to show that it is serious about both ensuring women's right to vote and right to personal security? Has it enacted strong legislative regulations? Does it train local officials? Has it investigated complaints? Does it keep gender-disaggregated data sufficient to call attention to women's lack of access to voting?

The aim of holding states accountable for abuses committed by non-state actors is to effect a change in state practice, to prompt the state to act (for example, investigate complaints of discriminatory HIV testing or pregnancy testing by factory owners) or to initiate a programme of action to make it more effective in preventing abuses, such as training judges in gender-specific forms of violence and witness testimony. In the language of international human rights law, these are 'positive obligations'.<sup>17</sup>

For example, in the case of widespread governmental failure to investigate cases of domestic violence with patterns of 'accidental' deaths of newly married young women whose dowries were deemed insufficient, the goal is not to replace one named wrong-doer with another (ie put the state of India in the dock, instead of the husband and mother-in-law). The point is to 'give effect to a right' - here, the rights to survival and bodily integrity, equal protection of the law, and freedom from fear - by building structures of protection including prevention (education, limited police action in accordance with the law, etc) as well as investigation, prosecution, fair punishment and compensation. Making the original abuse that triggers the state responsibility illegal, and devising a system to hold the original abuser accountable (incorporating marital rape or domestic violence within the criminal code, clearly penalising job, housing or health care related discriminations in the appropriate legal scheme) is part of the human rights obligation of the state.

To truly understand and respond to abuses also requires looking at how gender interacts with other aspects of identity and a woman's relationship to her community - colour, age, class, ethnicity, sexual identity (which can include her sexual orientation), nationality or status as a migrant or refugee, as well as health status. The possible aspects of identity that abuses are directed at can be many, and international human rights law has begun to take seriously the

obligation to look seriously at how they operate<sup>18</sup>, for the dynamics of intersecting discrimination can work in many different ways and require both carefully disaggregated data and good analysis. An understanding of how the many kinds of prejudice and intolerance may compound each other is critical to understanding human rights. The key state obligations under the human rights treaties to respect rights, to protect rights and to fulfil rights reach to all kinds of discriminatory actions and culturally stereotyped attitudes -around race, around gender, around poverty and age - that make these actions more likely to happen.

A focus on gender discrimination also helps describe the scope and nature of the state's responsibility to respond to other forms of discriminatory practices. Gender operates in all spheres of life - at home, in the workplace, in the market, in public life. Recognising the interconnection of public life and private life is critical to understanding what steps the state must take toward non-state actors to guarantee the full range of rights to women and men without discrimination.

Finally, the entire structure of state responsibility requires a gender analysis or it will simply be less efficient in ending abuses of women's rights, as it will miss the concrete and specific measures required to address the root causes and gender-specific harms.

**A gender analysis.**

*Gender specific analysis<sup>19</sup> and reporting requires examining the effects of gender - the socially constructed roles of women and men in public and private life -- on how human rights are enjoyed. It examines what are (1) the conditions that contribute to the occurrence of rights violations, (2) the nature of the violations and the forms they take, (3) the consequences of the denial or violation for the victim, and (4) the availability and accessibility of remedies. For example, if a girl of a minority ethnic group travels to the city to find work with relatives as a domestic, how do such things as the gendered, 'cultural' expectations that girls of her age and region are passive and free from infection with HIV/AIDS contribute to increased likelihood of attacks, including sexual attacks? In addition the girl's circumstance make it unlikely she will complain to the uncle who employs her, or seek outside help from neighbours or police. Her uncertain status in the city may make her afraid to contact authorities who may respond by returning her to her uncle's home.*

## 7. What you can do

Understanding the web of rights which form the human rights law system and apply to women is a first step towards claiming those rights. The next step is to ensure that those

rights are translated into reality at the national level in the laws, the policies, the practice and in the way resources are allocated to ensure their implementation.

It is too often the case that the rhetoric on women's human rights is not matched by action. Your contribution can be to be the link and the instigator for change in the home, the market place, the community, and the state. The following suggestions for action are only a fraction of what can be done to secure women's human rights. For further ideas for action and to learn more about these issues, please refer to the short bibliography below.

- Find out what human rights treaties your government has ratified and when it is due to report on the implementation of those treaties. For information about the treaties your government has ratified and its reporting obligations refer to the website of the UN Office of the High Commissioner for Human Rights at: <http://www.unhchr.ch/>
- Get copies of the reports presented by your government to these bodies and identify where the implementation of those rights for women, including in relation to state responsibility for abuses by non state actors, is addressed or where it is absent . Write a 'shadow' report that integrates gender and points to any weaknesses in the implementation. Submit that report to your government and to the treaty body. For additional guidance in creating alternate reports check the UNIFEM Website at : <http://www.unifem.undp.org/index.htm> and the IWRAW website at: <http://www.igc.org/iwraw/ngo/samples/>
- Campaign for your government to ratify all human rights treaties and use this opportunity to work in coalition with other non-governmental organisations to ensure the integration of gender in the implementation of human rights obligations. In addition, pressure your government to remove any reservation it has made to the treaties it has ratified.
- If your government has ratified the Women's Convention, campaign for ratification of the Optional Protocol to this convention (the OP to CEDAW).

#### **Optional Protocol to CEDAW**

*The potential impact of the newly adopted Optional Protocol to CEDAW includes strengthening state accountability for abuses by non-state actors. This complaint mechanism, adopted by the General Assembly in October 1999<sup>20</sup> allows women to bring communications that allege violations of their rights under the Convention, including complaints that the state has failed in its duty to act to protect against abuses. As the Committee reviews communications, its views - the answers it gives after collecting information from the state concerned as well as other sources - will apply the doctrine*

*of state responsibility, in part through the review standard of due diligence, and can make a tremendous difference in women's lives.*

- Campaign for your government to sign and ratify the Statute of the International Criminal Court (ICC) and ensure that laws are adopted at the national level to enable the prosecution of perpetrators of crimes under international law including gender specific crimes.
- Review your national laws to make sure that these laws are in line with the responsibility of the State to 'respect, protect and fulfil' including in relation to abuses by non state actors.
- Review your government's implementation of the commitments made in the Beijing Platform for Action, including national action plans, and assess their implementation.
- Work to ensure that your government's contribution and implementation of the outcome of world conferences, including the World Conference on Racism in 2001, recognises adequately the intersection between gender and other bases of discrimination.

## Endnotes

1. The fundamental principle of non-discrimination is articulated in the 1948 Universal Declaration of Human Rights (UDHR) in its Article 2 as 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' The 1989 Convention on the Rights of the Child further elaborates on this principle in its Article 2 as 'without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.'
2. States that have ratified a treaty have an obligation to report to the 'treaty bodies', the bodies of independent experts appointed to review the implementation by a state party of a treaty. The 'treaty bodies' include CERD (racial discrimination), CEDAW (discrimination against women), the Human Rights Committee (civil and political rights), the ESCR Committee (economic, social and cultural rights), the Committee against Torture, and the Committee on the rights of the Child).

3. In the 'Report on the Right to Food as a Human Right', Asbjorn Eide elaborated on the meaning of these concepts which are used to define the parameters of State responsibility. See E/CN.4/Sub.2/1987/23 (7 July 1987) at para. 66 - 69.
4. *Non-state actors* has therefore become the term representing perpetrators for whose actions the state, in certain circumstances, has to answer internationally. It is preferable to the term 'private actors' because it avoids the confusing use of the term 'private' which in some cases is linked to distinctions made between public and private life. The state has responsibilities in both public and private life, and private actors operate in both public and private life within the reach of state responsibility.
5. For an example of a human rights approach, including litigation, economic and social rights impacted by oil development in Ecuador, see Center for Economic and Social Rights, 'Rights Violations in the Ecuadorian Amazon: The Human Consequences of Oil Development' in *Health and Human Rights: A Reader* (New York: Routledge, 1999); for a focus on civil and political rights affected by corporate activities, see Human Rights Watch, *The Enron Corporation - Corporate Complicity in Human Rights Violations*, (January 1999).
6. See, e.g., the draft *Articles on State Responsibility* and its commentary set out by the International Law Commission, Report of the ILC (1996)
7. CERD, General Recommendation 20 (*Non-discriminatory implementation of rights and freedoms*, [art.5]) 15/03/96. The Committee on the Elimination of Racial Discrimination is the group of experts that oversees the implementation of the Convention.
8. In human rights jurisprudence this standard was first articulated by a regional court, the Inter- American Court of Human Rights, in looking at the obligations of the state of Honduras under the American Convention on Human Rights. The Court held that States have a duty to 'organize the governmental apparatus, and in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights'. *Velasquez-Rodriguez*, ser. C.,No.4, 9 Hum. Rts.I.J. 212 (1988).
9. See, e.g., General Recommendation 19, by which CEDAW determined that the Women's Convention's definition of discrimination encompassed violence against women as an obstacle to women's equality and employed the due diligence standard to describe the measure of review of State steps. A/47/38.

10. While this clause 'in accordance with national legislation' was clearly inserted as a kind of 'claw back' clause, the actual effect of the clause must be interpreted in the light of the good faith obligation of states to conform their national legislation to the principles of the UDHR or to relevant binding treaty obligations, wherein questions of equal protection of the law, non-discrimination and the right to an effective remedy cannot be limited.
11. UN declaration, article 4 (c), UN GA Res. 48/104 (20 December 1993).
12. See inter alia, the *Report of the Special Rapporteur on violence against women, its causes and consequences*, E/CN.4/2000/68.
13. The question of how to review whether a state has utilised its resources well is a common concern in human rights work in regard to positive obligations in all rights, with particular attention today to economic and social rights. There is extensive treaty body commentary on how they proceed in evaluating actions and omissions in the context of resources; in addition the Limburg Principles and Maastricht Guidelines give specific analysis on how to proceed. In all cases, the first obligation is not to discriminate - including on the basis of gender - in regard to the allocation of resources. See *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, E/CN.4/1987/17 also in Vol. 9, 2 Human Rights Quarterly 1987. For the text of the Maastricht Guidelines, January 22-26, 1997. see: <http://www1.umn.edu/humanrts/instate/Maastrichtguidelines.html>
14. UN Declaration on the Elimination of Violence Against Women, article 4.
15. See for example, Special Rapporteur on violence against women, E/CN.4/1997/47 (14 February 1997); Special Rapporteur on extra-judicial, summary and arbitrary executions, E/CN.4/2000/3 (25 January 2000)
16. See for example the ILC commentary to draft articles 14 and 14 on state responsibility and insurrectional groups or movements; the *Final Report of the Special Rapporteur on Systematic Rape, Sexual Slavery, and Slavery-like practices during armed conflict, including internal armed conflict*, (E/CN.4/Sub.2/1998/13, 22 June 1998) and T. Meron, *The Humanizing of Humanitarian Law*, 94 AJIL 239 - 278 (April 2000)
17. Positive obligations that inhere to all rights, not just economic and social rights, have been recognised as obligations of the state in a wide array of treaty comments and

regional and international court cases. See {X and Y v Netherlands, 91 ECHR , ser. A (1985), the comments of the HRC in regard to article 10 (persons deprived of their liberty etc.); A. Clapham, *Human Rights in the Private Sphere* (Oxford: Clarendon Press, 1993).

18. For example, CERD, the Committee that monitors the Convention on the Elimination of All Forms of Racial Discrimination , has just adopted a General Recommendation 25 that looks at the gender implications of race discrimination.
19. This summary of gender specific analysis and reporting is taken from UNIFEM, *The Integration of Women's Human Rights into the Work of the Special Rapporteur*, 1993 at pages 4-6.
20. Annexed to UN General Assembly Resolution A/RES/54/4, (15 October 1999).

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## Suggested reading

### State responsibility

Abdullahi Ahmed An-Na'im, 'State Responsibility under International Human Rights Law to Change Religious and Customary Laws', in Cook, ed., *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press: Philadelphia, 1994).

Andrew Clapham, *Human rights in the private sphere*. (Clarendon Press: Oxford, 1992).

Rebecca Cook, 'State Accountability Under the Convention on the Elimination of All Forms of Discrimination Against Women', in Cook, ed., *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press: Philadelphia, 1994).

Committee on the Elimination of Discrimination Against Women, *General Recommendation 19 (Violence against Women)*, U.N. Doc. CEDAW/C/1992/L.1/Add.15 (1992).

Human Rights Committee, *General Comments*, in particular No 8, 18, 27 and 28. For the texts see: <http://www.unhchr.ch/>

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Para, 9 June 1994), OEA/Ser.L/II.2.27

Inter-American Court of Human Rights Judgment, *Velasquez-Rodriguez Case (1988)*, ser. C., No.4, 9 Hum. Rts.I.J. 212 (1988).

Celina Romany, 'State Responsibility goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law', in Cook, ed., *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press: Philadelphia, 1991).

Donna Sullivan, 'The Public/Private Distinction in International Human Rights Law', in Peters & Wolper, eds., *Women's Rights/Human Rights: International Feminist Perspectives* 126 -134 (1995).

UN Declaration on the Elimination of Violence against Women, G.A. res.48/104 of 20 Dec. 1993

UN Special Rapporteur on Violence against Women [all reports since 1994].

For the reports See: <http://www.unhchr.ch/>

## **Gender integration**

Report by the UN Secretary General, *Integrating the Gender Perspective into the Work of the United Nations Treaty Bodies*, U.N. Doc HRI/MC/1998/6 (3 September 1998)

UNIFEM, *Integration of Women's Human Rights into the Work of the Special Rapporteurs, Promoting Accountability for Women's Human Rights: Working with the Thematic Special Mechanisms of the Commission on Human Rights*.

See: [http://www.unifem.undp.org/hr\\_res.htm](http://www.unifem.undp.org/hr_res.htm)

## **Key Amnesty International Reports**

*Israel – Human rights abuses of women trafficked from countries of the former Soviet Union into Israel's sex industry.*

May 2000. Index: MDE 15/11/99

*Women in Afghanistan: Pawns in men's power struggles.*

November 1999. Index: ASA 11/11/99

*Pakistan: Violence Against Women in the Name of Honour*

September 1999. Index: ASA 33/17/99

*The International Criminal Court: Ensuring an effective role for victims.*

July 1999. Index: IOR 40/10/99

*Appeal by Amnesty International to all states to ratify the statute of the International Criminal Court as soon as possible*

May 1999. Index: IOR 40/07/99

*Making a Reality of Women's Rights: Bringing into force the Optional Protocol to the Women's Convention.*

April 1999. Index: IOR 51/04/99

*A Strong Optional Protocol to the Women's Convention: Making it a reality in 1999*

Index: IOR 51/06/98

*Amnesty International September 2000*

*AI Index: IOR 50/01/00*

*The International Criminal Court: Ensuring Justice for Women*

Index: IOR 40/06/98

*1998: A wonderful year for women's human rights?*

March 1998. Index: IOR 40/12/97

*Women's rights are human rights – Commitments made by governments in the Beijing Declaration and the Platform for Action.*

March 1996. Index: IOR 41/05/96