

DOMESTIC VIOLENCE AND THE WAY FORWARD

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Abstract

Even though States have undertaken more actions to protect the victims and punish the perpetrators in domestic violence cases, not enough attention is being paid to the unequal socio-economic position of women. This writing will analyse ways and means that may lead to the abolition of discrimination against women.

Abstrak

Walaupun Negara telah berupaya meng-hukum pelaku kekerasan dalam rumahtangga dan melindungi korbannya, perhatian terhadap posisi sosio-ekonomi wanita masih belum cukup diberikan. Tulisan ini akan menganalisis upaya-upaya yang dapat dilakukan untuk mengakhiri tindakan diskriminatif terhadap hak-hak wanita.

Keywords: *equality, women, domestic violence, responsibility.*

A. Introduction

The purpose of this article is to examine the background of the mandate of the UN Special Rapporteur on Violence against Women (SRVAW) and the achievements of the past 15 years. Since the mandate is broad and there are many different forms of violence against women (VAW), the focus will be on domestic violence (DV) and its causes and consequences. Special attention will be paid to the responsibility of States and other actors, the principle of due diligence, and in particular ways and means to prevent DV in future.

In the next section, a historical overview will be given of the struggle to put the issue of VAW on the international agenda culminating in the creation of the mandate for a Special Rapporteur. In section

3 the concept of VAW will be defined and the various forms of gender-based violence will be discussed. Section 4 will concentrate on domestic violence and its most important causes and consequences. Next, the question of responsibility will be studied. More and more, human rights bodies and scholars come to the conclusion that States become co-responsible next to the actual perpetrator if they fail to show due diligence in their reaction to the occurrence of large-scale and structural violence of human rights happening at the hands of non-State actors under their jurisdiction. Section 6 is devoted to current responses to incidents of domestic violence while the next section contains suggestions for improvement and the way forward. Finally, a short conclusion is given in section 8.

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B. Background on the SRVAW Mandate

Immediately after World War II when attention for human rights was acute and the Universal Declaration on Human Rights was drafted, there was little thought for the specific needs and problems of women. International law was still predominantly focused on violations perpetrated by States in the public sphere and everything that happened behind the front door was regarded as a family affair and of no concern of the State and even less of the international community. When after much power struggle between the East and the West final agreement had been reached on the codification of the human rights contained in the Universal Declaration in two general human rights treaties,¹ the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights, common article 3 of these treaties on gender equality was supposed to adequately cover women's rights.²

In the sixties of the previous century, however, the notion arose that women were discriminated against in many different ways and that they were largely excluded from the public sphere. In some States, women still were denied the right to vote or to stand for elections. Furthermore, it was recognised that the way in which society functioned was

very much male centred and that women, who had played an important role in society and the war industry during the Second World War, were lagging behind as far as education and employment were concerned and were mainly kept at home to take care of the household and raise the children. As a matter of fact, many of the violations of women's rights were happening in the private sphere of the home, the family and the community, but this was not under public scrutiny. On the contrary, violence against women (VAW) was not an issue that was publicly discussed.

The growing call for reform and inclusion of women in the human rights system finally led to the adoption of the Convention on the Elimination of All Forms of Discrimination against Women (Women's Convention) in 1979.³ For the first time, women and girls could rely on a specific instrument that comprehensively dealt with all sorts of human rights. Monitoring State compliance with the obligations contained in this international treaty was left to a body of independent experts, the Committee on the Elimination of Discrimination against Women (CEDAW).⁴ With the exception of trafficking in women, the issue of VAW was not included in the Convention, however.⁵

¹ Steiner, Henry J. and Alston, Philip (eds.), 2000, *International Human Rights in Context: Law, Politics, Morals*, Clarendon Press, Oxford, pp. 138-139.

² Common article 3 reads: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights respectively civil and political rights, set forth in the present Covenant.

³ UN Convention on the Elimination of All Forms of Discrimination against Women, General Assembly resolution 34/180 adopted on 18 December 1979 and entered into force on 3 September 1981.

⁴ CEDAW consists of 23 independent experts from around the world. The great majority of CEDAW's members are female. In fact, since its inception, the maximum number of male members on the Committee has been two. In 2010, two men sit in the Committee, one from Finland and the other from the Netherlands.

⁵ Article 6 of the Women's Convention reads: 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women'.

Issues like domestic violence or incest were still regarded as problems that ‘others’ would have; social outcasts or the lower social classes who abused alcohol and lived in poor housing conditions, or peoples in backward countries that still knew barbaric rituals.⁶ In any case, it was not a matter that called for interference or action of any kind at the State or at the international level.

This attitude changed considerably in the nineties of the previous century. In 1992, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted General Recommendation No. 19 which made it clear that gender-based violence is a form of discrimination against women falling under the definition of article 1 of the Convention.⁷ With this General Recommendation CEDAW filled the gap that had been caused by taboos around gender-based violence and that had led to the omission of attention for VAW in the Women’s Convention.

Women’s non-governmental organizations (NGOs) and civil society organizations (CSOs) also brought the message home to the World Conference on Human Rights in Vienna in 1993. They urged the United Nations to take action and no longer close

their eyes for VAW since gender-based violence may undermine and annihilate the enjoyment of any and all of the human rights that women are entitled to. As a reaction, the General Assembly adopted at its forty-eighth session on 20 December 1993, without a vote, resolution 48/104, in which it proclaimed the Declaration on the Elimination of Violence against Women (DEVAW), unfortunately still only a non-binding document.

The only existing legally binding instrument on VAW was adopted a year later in the context of the Organization of American States. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) has been ratified by 32 countries.⁸

The UN Commission on Human Rights also took up the challenge by appointing a Special Rapporteur on Violence against Women (SRVAW) on 4 March 1994.⁹ The mandate of the SRVAW was broad and included a study into causes and consequences of gender based violence.¹⁰ The mandate holder was encouraged to cooperate closely with governments, NGOs, women’s movements and other UN agencies, mechanisms organs and treaty bodies. The

⁶ The SRVAW found that even now there is a widespread feeling in Sweden that ‘ordinary’ Swedish men do not beat their wives. Perpetrators are believed to be men with little or no education, alcoholics, or men of non-Western descent. UN doc. A/HRC/4/34/Add.3, Mission to Sweden, 06-02-2007, para. 22.

⁷ CEDAW, General Recommendation No. 19, 1992, paras. 1-7.

⁸ Up till now it has remained a Latin American affair since neither Canada nor the USA has become parties to this Convention.

⁹ UN doc. E/CN.4/RES/1994/45, Commission on Human Rights resolution: The question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women, 4 March 1994.

¹⁰ Coomaraswamy understood the mandate to contain two components: 1) to set out the elements of the problem before her, the international legal standards and a general survey of incidents and issues as they relate to the many problem areas, and 2) to identify and investigate factual situations, as well as allegations which may be forwarded to the SRVAW by concerned parties. UN doc. E/CN.4/1995/42, Preliminary report SRVAW, 22-11-1994, para. 8.

SRVAW's tasks include the collection of information on causes and consequences of VAW, the recommendation of ways and means to prevent VAW, eliminate it and remedy its consequences. Furthermore, the mandate holder is authorized to receive individual communications and to communicate with governments about alleged VAW issues under their jurisdiction by way of allegation letters (these are written when violations have allegedly already taken place) or urgent appeals (which are sent when serious violations may be imminent or the continuance of the alleged violation may have very grave consequences for the victims).

In the 15 years that have passed since, two mandate holders have contributed to the examination, clarification and solution of VAW. The first mandate holder was the Sri Lankan Radhika Coomaraswamy, a lawyer who held this position from June 1994 till July 2003. She was succeeded by the Turkish sociologist Yakin Ertürk who served from August 2003 till July 2009. In August 2009 she was replaced by the South-African Rashida Manjoo who is a lawyer.

In these 15 years an amazing amount of 14 annual reports and 32 country reports have been written.¹¹ In addition, each of the mandate holders has intensely communicated with governments all over the world resulting in an additional amount of 11 communications reports.

Attention for VAW was also strengthened by the adoption of the Optional Protocol (OP) to the Women's Convention in 1999.¹² The two mechanisms contained in this Protocol, *viz.* the individual and group's complaint procedure¹³ and the inquiry procedure¹⁴ open up new possibilities to communicate with States on measures to prevent VAW and remedy existing structural patterns of gender-based violence.

An obvious advantage of the worldwide mandate of the SRVAW over the monitoring possibilities of CEDAW is that ratifications of any human rights convention is not required and that it is not possible for States to make any reservations. Because the SRVAW is authorized to receive and to respond to individual complaints, the mandate can be seen as the last resort for holding States accountable

¹¹ Both SRVAWs undertook many country missions. During the 15 years the following countries were visited in alphabetical order: Afghanistan, Algeria, Bangladesh, Brazil, Colombia, Cuba, Democratic People's Republic of Korea, Democratic Republic of Congo, East Timor, El Salvador, Ghana, Guatemala, Haiti, India, Indonesia, Islamic Republic of Iran, Japan, Liechtenstein, Mexico, Nepal, the Netherlands, Poland, Republic of Korea, Republic of Moldova, Russian Federation, Rwanda, Saudi Arabia, Sierra Leone, South Africa, Sudan, Sweden, Tajikistan, Turkey, United States of America.

¹² GA Resolution 54/4, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 15 October 1999.

¹³ Art. 2 of the OP reads: Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party.[...]

¹⁴ Art. 8(1) of the OP reads: If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

and for protecting women in dire situations.¹⁵

A disadvantage of the mandate is that the views expressed by the SRVAW have no legal consequences. Only since 2004, the SRVAW is allowed to hold a presentation in the UN General Assembly once a year and since 2008, an annual oral presentation to the Commission on the Status of Women (CSW) has also been made possible.

C. Definition and Forms of VAW

The SRVAW has made use of the definitions of gender-based violence as contained in CEDAW General Recommendation No. 19 on VAW and in the DEVAW. CEDAW defines VAW as ‘violence directed against a woman because she is a woman or which affects a woman disproportionately. It includes physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty’. DEVAW goes a step further by stipulating that VAW means: ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life’. DEVAW further refers to the three arenas in which VAW may occur: the family, the community and the State.

Especially during the first few years of the mandate, SR Coomaraswamy, who was keen to raise public awareness of VAW

and to set international standards, structured her research and reports according to this division.

Violence in the family was further elaborated upon as containing domestic violence, battering, marital rape, incest, forced prostitution by the family, violence against domestic workers and the girl-child, sex-selective abortion and infanticide, traditional practices such as genital mutilation, dowry-related violence and religious/customary laws.

The SRVAW distinguished as forms of *violence in the community*: rape/sexual assault, sexual harassment, violence within institutions, trafficking and forced prostitution, violence against migrant workers and pornography.

Violence perpetrated or condoned by the State was held to contain gender-based violence during armed conflict, custodial violence, violence against refugees and internally displaces persons, and violence against women from indigenous and minority groups.

Ertürk added a new category, the **transnational arena** which has been created by globalization and increased international and transnational dealings. Furthermore, she focused on implementation of international norms and certain obstacles that prevent women from fulfilling their human rights such as cultural impediments and HIV/AIDS.

It goes without saying, that the immense diversity and complexity of VAW issues has forced the SRVAW to focus on certain

¹⁵ UN doc. A/HRC/11/6/Add.5, 15 years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences (1994-2009), A Critical Review, 27 May 2009, para. 24.

key areas within these arenas.¹⁶ These key areas are: domestic violence, trafficking and migration, armed conflict and reproductive rights, HIV/AIDS and violence against women. The rest of this paper will be focused on domestic violence.

D. Domestic Violence

The SRVAW has defined violence in the family as: ‘violence perpetrated in the domestic sphere which targets women because of their role within that sphere or as violence which is intended to impact, directly and negatively, on women within the domestic sphere.’¹⁷ From this definition it becomes clear that violence in the family encompasses much more than woman-battering. Indeed, according to the SRVAW it also includes: ‘marital rape, incest, forced prostitution, violence against domestic workers, violence against girls, sex-selective abortions and female infanticide, traditional violent practices against women, son preference, female genital mutilation and honour crimes.’¹⁸ In addition, the domestic sphere does not always mean that the crime is committed in the victim’s own home. While the terms violence in the family or domestic violence express neutrality, in the majority of the cases the violence is committed by men towards women.¹⁹

If States react to domestic violence

with legislation, they will focus on violence happening between spouses, *i.e.* a man and a woman who have been wed in accordance with the law. Women find themselves in various forms of relationships, however, and in many cases the violence occurs or continues after the couple has separated. That is why Coomaraswamy proposed to include all kinds of intimate-partner relationships into domestic violence rules and regulations, such as co-habiting partners and previous partners.²⁰

Since this paper is focused on the violence perpetrated by a man towards his female partner (whether co-habiting, wife, or ex-partner) the term domestic violence (DV) is used as an equation of woman-battering.

The mandate of the SRVAW not only consists of studying the occurrence of VAW, but also of investigating its causes and consequences. If States are requested to mention the root causes of VAW in general or DV in particular, they will come up with a list including alcohol and drug abuse, poor living conditions such as cramped quarters, unemployment, provocation by the woman by not properly attending to her household responsibilities or refusing to fulfil her ‘wifely’ duties, and a cycle of violence occurring in the man’s family inducing him to follow in his father’s footsteps.²¹ As DV happens all over the globe and in

¹⁶ *ibid.*, part III. Key areas of focus, paras. 28 - 61

¹⁷ UN doc. E/CN.4/1996/53, Report SRVAW, 05-02-1996, para. 28.

¹⁸ UN doc. E/CN.4/1999/68, Violence in the family, 10-03-1999, para. 17.

¹⁹ UN doc. E/CN.4/1996/53, 1996, para. 56. UN doc. E.CN.4/1995/42, Preliminary report SRVAW, 22-11-1994, para. 118.

²⁰ Many acts of violence against women are committed by their ex-partners who cannot accept that their partner or wife has left them. UN doc. A/HRC/11/6/Add.5, 15 years of the UN SRVAW, its causes and consequences (1994-2009), a critical review, 27-05-2009, para. 31.

²¹ UN doc. E/CN.4/1995/42, Preliminary report SRVAW, 22-11-1994, para. 119.

all layers of society, it seems clear that it is not an aberration of a limited group of men or an isolated phenomenon. Conditions like alcohol abuse or poverty are certainly factors that may exacerbate the violence, but they are not the root causes. These are to be found in social, economic, and cultural power structures that systematically discriminate against women and keep them in a subordinate position.²² While there are of course cultural differences, the similarities among all countries in the world whether in the rich North or the poor South are striking: everywhere women own less property, have an income that is lower than men even if they do exactly the same work, their participation in decision-making lags far behind men's, and they are burdened with unremunerated household chores and raising the children.²³ Stereotypical ideas that regard men as the natural leaders, decision-makers, and heads of the household are explicitly or implicitly acknowledged in the law or customary habits. Men are regarded as the makers of culture while women are supposed to be the bearers or custodians of the common identity of the group who are expected to impregnate their children's minds with traditional concepts.²⁴ In addition, in some societies women's sexuality is controlled and the honour of the family depends on its women's virginity and chastity, maintaining double standards as far as the sexuality of men and women is concerned and sanctioning the use of violence if women do not abide by

the norms.²⁵ To make matters worse, the use of force is accepted as masculine behaviour and as a means to solve a dispute.²⁶

Gendered ideas also influence men's life and the choices they can make. Almost everywhere it is socially unacceptable if men stay at home to do the household and look after the children while their wives are the breadwinners of the family. Even in societies where parental leave for men has been introduced in the law, employers may make it very difficult for fathers to realize their leave. Men are thus forced in their role as money-makers, bearing the burden of taking care financially of their wives and children and thus losing out the opportunity of seeing their children grow up. However, men are on the receiving end as far as money, power and autonomy are concerned.

Normative structures around the world send out mixed messages reinforcing rather than abolishing patriarchal systems. On the one hand most States acknowledge women's human rights and express notions of equality between women and men in the Constitution or other laws. At the same time, legal and customary norms may help to retain men's domination and may even sanction violence against women. For instance, tax laws may favour the male breadwinner model, marital rape may not be a crime, inheritance laws may discriminate between women and men allotting women only part of what men will receive, perpetrators of honour crimes may receive less or no punishment, personal law

²² *ibid.*, para. 49.

²³ UN doc. A/HRC/11/6/Add.6, Political economy and violence against women, 23-06-2009, para. 20.

²⁴ UN doc. A/HRC/4/34, Intersections between culture and violence against women, 17-01-2007, para. 64.

²⁵ UN doc. A/HRC/11/6/Add.5, 27-05-2009, para. 98.

²⁶ *ibid.*, para. 99.

systems are preserved,²⁷ policies on abortion, family planning, and reproductive health may undermine women's reproductive rights and sexual autonomy.²⁸

The unequal social and economic relation between women and men disempowers women and makes them dependent on men for their daily needs like housing, food, and clothing. Dependency is a fertile soil for abuse of power and gender-based violence.

Consequently, women's human rights are violated or even annihilated in the most intimate sphere that exists in society: the family home. This is the very sphere that should be a safe haven where trust, respect and dignity should be safeguarded. In view of the weak socio-economic position many women find themselves in, they have no other option but to remain in an abusive relationship enduring and even hiding what happens behind the front door.

This has serious physical, economic and social repercussions. Women's health is affected by physical abuse which will also interfere with their ability to work.²⁹ Women's mental health will deteriorate

because victims of DV live in constant fear, lose their self-esteem and feel ashamed of what is happening to them.³⁰ Many abused women are literally or figuratively isolated because their partners restrict their freedom of movement,³¹ or because they cannot talk about their situation to anyone. Many victims suffer from battered-woman syndrome causing them to sink away in a dull apathy thinking that there is no way out.³²

E. Responsibility and Due Diligence

In order to deal with and eradicate VAW in general and DV in particular, a three-pronged strategy is needed. Two actions that will yield immediate and short-term results are protecting the victims of DV, for instance by interfering in the private sphere of the home and creating shelters. Secondly, the consequences of DV should be addressed, for example by punishing the perpetrators and compensating the victims. For long-term results it is imperative that the causes of DV are eliminated by taking legal and other appropriate measures to further women's equality and to abolish stereotypical role

²⁷ In many multicultural societies 'personal laws' as regards personal and family law are applied to certain ethnic or religious groups instead of the national laws in order to guarantee that the specific groups' identity will be protected and preserved. See e.g. Shachar, Ayelet, 2001, *Multicultural Jurisdictions; Cultural Differences and Women's Rights*, Cambridge University Press, Cambridge, pp. 17-18.

²⁸ UN doc. A/HRC/11/6/Add.5, 2009, paras. 86-88.

²⁹ UN doc. A/61/122/Add. 1, In-depth study on all forms of violence against women; Report of the Secretary-General, 06-07-2001, paras. 157-166.

³⁰ UN doc. E/CN.4/1995/42, 1994, paras. 73-74.

³¹ Some women are virtual prisoners in their own home because they are kept after lock and key and cannot leave the house unaccompanied.

³² Battered Women Syndrome is a psychological reaction that occurs when normal people are exposed to repeated trauma. The syndrome has four general characteristics: 1) the woman believes that the violence is her fault; 2) she is unable to place the responsibility for the violence elsewhere; 3) she fears for her life (and for her children's lives); 4) she has an irrational belief that the abuser is omnipresent and omniscient so there is no possibility for escape. See Walker, Lenore, 2000, *The Battered Woman Syndrome*, 2nd ed., Springer Publishing Company, New York.

models that keep women in a secondary socio-economic position.

Since States voluntarily accept the obligations enshrined in international human rights conventions and DV is regarded as a violation of women's human rights, logically the question arises whether States can be held responsible for gender-based violence and whether they should take the initiative for bringing about a change that will lead to the eradication of DV.

As became clear in section 3 *supra*, there are various forms of VAW and a diversity of perpetrators. At first, it was only accepted that States would be responsible for violence perpetrated by State organs or agents. If women are battered, abused, or raped while they are under the State's custody, the classic elements for State responsibility, *viz.* an international obligation, that is violated by an act or omission that can be attributed to the State, have been fulfilled.³³

State responsibility in cases where the violence happens at the hands of private persons, such as in case of DV, is not so easy to prove. Normally, criminal law provisions and a State prosecution and punishment system will be adequate to deal with violence happening between citizens, and the State will not bear any responsibility for the harm that is caused. That is why it is sometimes maintained that the State

has fulfilled its duties when instances of domestic violence are prosecuted and the perpetrators punished. In theory, it would be enough if acts of domestic violence can be classified under already existing types of offences like assault, abuse or rape, although States have been urged to treat domestic violence as a separate crime.

In the famous *Velásques-Rodriguez v. Honduras* case, the Inter American Court of Human Rights came to the conclusion that States may have an obligation to be duly diligent as regards human rights violations by non-State actors.³⁴ Failure to observe this due diligence standard will have as a consequence that the State becomes co-responsible for the violation, next to the actual perpetrator. Specifically, the standard entails that the State concerned should show that it has done everything in its power to prevent the violations and to protect the victims and also that the crime has been adequately investigated and the perpetrators duly prosecuted and punished or dealt with in another satisfactory manner.³⁵ Of course, not just any individual offence justifies holding the State responsible. Only in cases where serious human rights violations happen on a large scale and in a structural manner, responsibility of States is called for if it is clear that the State shows tardiness or a lack of interest to actively tackle the

³³ See GA Resolution A/RES/56/83, Responsibility of States for Internationally Wrongful Acts, 28-01-2002, art. 2. Of course, human rights obligations form a special category if compared to other international obligations since the obligations are not so much towards other States but toward the State's population.

³⁴ Inter-American Court of Human Rights, Judgment of 29-07-1988, OAS/ser.L./V./III.19, doc. 13, where the Government of Honduras was held responsible for the disappearance of individuals although the actual abductions had been carried out by private persons.

³⁵ CEDAW General Recommendation No. 19 on Violence Against Women, 1992, UN doc. A/47/38, para. 9.

violations concerned.³⁶ In view of the fact that domestic violence is a very serious offence, affecting various human rights, that it happens worldwide on a large scale, and that it is systemic in all societies caused by unequal socio-economic positions between men and women, it may be maintained that up till now all States have failed the due diligence standard and that they can be held co-responsible.³⁷

According to Ertürk, an important contribution of the mandate holders in respect of combating DV has been the elaboration and broadening of the concept of State obligations.³⁸ The two SRVAWs agree that States not only have an obligation to prosecute and punish the private perpetrators, but that they should also take care of the victims by providing legal support, health care, safety and shelter. Most importantly, the mandate holders require the State to prevent VAW by addressing the root causes, and they maintain that merely taking legislative measures is not enough, but that public policies and public education are needed as well.³⁹

The SRVAW, states that States are

obliged to **prevent** VAW by ratifying human rights treaties and by enacting specific legislation such as, but not limited to, criminalizing acts of gender-based violence. In addition, positive actions and policies by the State are required. Such actions could for instance consist of public education campaigns, sensitization of agencies who are engaged with women's rights programmes and data collection in order to assess the scope and extent of the problem.⁴⁰

It would seem to me that States cannot be under a due diligence obligation to ratify human rights treaties. International law is still largely based on the consent of States and a State cannot be forced into becoming a party to a treaty. The other preventive measures suggested by the SRVAW are very valuable, however. Especially raising public awareness and educating people about their human rights and women's right to equality. Most important maybe the suggestion that States actively intervene in existing social structures that are detrimental to the enjoyment of women's human rights and transform them. If society loses its

³⁶ Cook, Rebecca, 'State responsibility for Violence of Women's Human Rights', in: Harvard Human Rights Journal, Vol. 7, Spring 1994, p. 151.

³⁷ In the combined fourth and fifth periodic report of Indonesia to the Committee on the Elimination of Discrimination Against Women (CEDAW) it was stated that within the period 1997-1999 only 42 cases of DV were reported. There was an increase of reported cases between 2000 and 2001 to 213 cases. UN doc. CEDAW/C/IND/4-5, 27-07-2005, para. 74. These figures do not seem to be realistic, however, and will be due to gross underreporting, as was hinted at by the Indonesian Government in its response to CEDAW in UN doc. CEDAW/C/IND/Q/5/Add.1, Responses to the list of issues and questions, 17-05-2007, para. 10. In comparison: it is estimated that annually 325,000 women are subjected to violence in the domestic sphere in the Netherlands; 132,000 of these cases concern physical violence (UN doc. A/HRC/4/34/Add. 4, Mission to the Netherlands, 07-02-2007, para. 30). According to a survey commissioned by the Swedish Government, 35% of all Swedish women who had a male partner had at least once in their life been subjected to DV (UN doc. A/HRC/4/34/Add. 3, Mission to Sweden, 06-02-2007, para. 21).

³⁸ UN doc. A/HRC/11/6/Add.5, 2009, para. 30.

³⁹ UN doc. A/HRC/11/6/Add.5, 2009, para. 33.

⁴⁰ UN doc. A/HRC/11/6/Add.5, 2009, paras. 66-67 and UN doc. E/CN.4/1999/68, para. 25. Also see UN doc. E/CN.4/2006/61, The due diligence standard as a tool for the elimination of violence against women, 20-01-2006, paras. 38-46.

patriarchal nature and women gain autonomy over their own lives, they are less susceptible to violence.

In case DV could not be prevented, the second obligation States have is to diligently **protect** the victim. This would entail providing services like legal and psychological counselling, health care, crisis support, financial aid, shelters and restraining orders.⁴¹ The SRVAW does not make clear whether these services are exclusively meant for the victims, since it may also be an appropriate measure to provide psychological counselling like anger management to the perpetrator or even oblige the batterer to take counselling in order to avoid violent behaviour in the future.

The final obligations States have in this context are **responding** adequately to occurrences of DV. This includes the investigation of the incident, the prosecution and punishment of the perpetrator or taking administrative or civil law measures against him, and offering reparation to the victim. Obviously, all these measures are evidence of failure, since the crime has been committed and the victim is suffering. Up till now, no State has succeeded in taking measures effective enough to prevent DV on any meaningful scale. Of course, inaction after the fact is not an option since impunity implies that the State condones the violence and approves of women's subordinate

position in society.

If the State is indeed co-responsible for the domestic violence happening under its jurisdiction, there is also a duty to repair the consequences to the victims. The SRVAW suggests legal remedies and rehabilitative and support services.⁴² A remedy that is often forgotten but highly important by way of restitution is providing the victim with adequate permanent housing in case she does not want to return to her abusive partner.⁴³

Ertürk proposed to expand the responsibility of States beyond the actual acts of violence by private perpetrators 'by calling upon States to address external pressures that bear upon particular groups because of their status, ethnicity or context, and that exacerbate domestic violence.' She thinks of stigma-laden HIV/AIDS policies, racism, and restrictive immigration policies.⁴⁴ In Sweden she noticed that in spite of the empowerment of women in the public-sphere deep-rooted structures of gender hierarchy persevere and that there are protection gaps for specific women's groups such as Sami, women with disabilities, immigrants, refugees or asylum seekers, and women in the sex sector.⁴⁵

As far as the Netherlands are concerned, the SRVAW pointed to the fact that the authorities regard DV among immigrant populations as a cultural affair while the socio-economic disadvantaged

⁴¹ UN doc. A/HRC/11/6/Add.5, 2009, para. 67.

⁴² UN doc. A/HRC/11/6/Add.5, 2009, para. 71.

⁴³ Of course, the abusive (ex-)partner may be expected to bear at least part of these housing costs. Westendorp, Ingrid, 2007, *Women and Housing: Gender Makes a Difference*, Intersentia, Antwerpen-Oxford, p. 280.

⁴⁴ UN doc. A/HRC/11/6/Add.5, 2009, paras. 35-36.

⁴⁵ UN doc. A/HRC/4/34/Add.3, Country mission report on Sweden, 06-02-2007, paras. 25 and 32-45.

position of immigrant women or their total dependence on their spouses caused by restrictive immigrant policies are not taken into consideration.⁴⁶

Another proposal by Ertürk entails to stretch State responsibility to actions of non-State actors that operate 'below' and 'above' the State. The point she makes is that at the moment States may only be held co-responsible for acts committed by private actors within the family and the community. However, there are also societal movements that greatly influence the behaviour of groups and may compel them to act in ways that disregards women's rights and keep women in a subjugated position. So-called identity politics movements have her greatest concern. Such movements cannot be held responsible themselves, but according to the SRVAW States should curb their influence and thus prevent violations.⁴⁷

Non-State actors 'above' the State are to be found in the transnational arena. The SRVAW draws attention to the impact of social and economic policies that negatively influence women's human rights.⁴⁸ Transnational corporations may have enormous power over macroeconomic decision-making and have influenced the process of global restructuring which has favoured liberalization and privatization. These economic changes in fact reinforce existing power relations which are to the detriment

of women's enjoyment of their human rights and economic position. While it is high time that transnational corporations and other business enterprises are themselves held responsible for human rights violations, it is primarily the task of States to protect their citizens and conclude trade and investment treaties that are conditional upon human rights. If they fail to do so, they should bear the responsibility for the ensuing violations.⁴⁹

F. State Responses to Domestic Violence

There is a whole range of actions that are undertaken by States to combat DV such as protecting the victims, prosecuting and punishing the perpetrators or taking administrative or private law measures against them. It is obvious, however, that most States are focusing on protecting the victims and prosecuting the perpetrators while little is being done to prevent the occurrence of DV.⁵⁰

One of the first measures most States have taken is criminalizing DV. This is in conformity with the suggestions of the SRVAW who urges States to investigate and prosecute cases of domestic violence and to convict and sentence the culprits.⁵¹ The SRVAW is furthermore in favour of defining DV as a separate offence, which should not be formulated in a gender-neutral way, but must be represented as a gender-

⁴⁶ UN doc. A/HRC/4/34/Add. 4, 2009, Country mission report on the Netherlands, section B, Violence against immigrant, refugee and asylum-seeking women.

⁴⁷ UN doc. A/HRC/11/6/Add.5, 2009, para. 72.

⁴⁸ UN doc. A/HRC/11/6/Add.5, 2009, paras. 72-73.

⁴⁹ UN doc. A/HRC/11/6/Add.5, 2009, paras. 76-77.

⁵⁰ For instance: UN doc. A/HRC/4/34/Add. 3, Mission to Sweden, 06-02-2007, para. 46.

⁵¹ UN doc. A/HRC/11/6/Add.5, 2009, para. 67.

based crime.⁵² This will serve the purpose of raising public awareness of the gender dimensions of DV.⁵³

There are certainly many advantages to criminalizing DV. First of all, it is a strong signal that DV is unwanted behaviour that is not tolerated by the authorities. Especially when DV is defined as a separate crime, the seriousness is stressed. The SRVAW sees a very important role for the judiciary and the office of the public prosecutor who should condemn all kinds of acts of VAW in the strongest terms. Their stance will influence public opinion about DV.⁵⁴

Criminalization may also have a deterring effect. This is more likely when there is a zero-tolerance attitude by the prosecuting authorities entailing that every case is rigorously investigated, punishments are commensurate with the seriousness of the crime, and no mitigating arguments are accepted as justifications. In several States it is felt that arrest of the perpetrator is the best action since it will bring immediate relief to the victim.⁵⁵ In Sweden, DV falls under the heading of 'gross violation of integrity' since 1998. Especially when violence is perpetrated towards a person with whom

the offender has or has had an intimate relationship the victim's integrity and self-confidence will be severely damaged. That is why the crime may be punished with imprisonment between six months and six years.⁵⁶

Besides these advantages there are also some catches concerning criminalization. First of all, in many States the implementation leaves much to be desired which means that the message of disapproval does not come across and many perpetrators get away with impunity.⁵⁷

The police are often very reluctant to interfere in the domestic sphere. They underestimate the seriousness of the crime and regard it as a lovers' tiff or a family affair and consequently, rather than taking upon themselves the role of keepers of the peace who have to deal with a criminal offence, they act like mediators trying to reconcile the couple.⁵⁸ A good example of police involvement may be found in Brazil, where since 1985 specialized women's police stations have been established that deal with domestic violence.⁵⁹ It is obvious that the police needs to receive specific information and training in how to deal with instances of DV.

⁵² UN doc. E/CN.4/1996/53, 1996, para. 129. Also, UN doc. A/61/112/Add.1, In-depth study of all forms of violence against women, Report of the Secretary-General, 06-07-2006, para. 318. Box 11 shows that by 2006, 89 States had adopted legislation addressing DV.

⁵³ See e.g. UN doc. A/HRC/4/34/Add. 4, Mission to the Netherlands, 07-02-2007, paras. 39-42 where the SRVAW disapproves of the fact that the Dutch Government has decided to define domestic violence in a gender-neutral manner.

⁵⁴ UN doc. A/HRC/11/6/Add.5, 2009, para. 70.

⁵⁵ UN doc. E/CN.4/1995/42, para. 128.

⁵⁶ UN doc. A/HRC/4/34/Add. 3, 2007, para. 47.

⁵⁷ For instance, UN doc. A/HRC/4/34/Add. 3, Mission to Sweden, 06-02-2007, para. 50.

⁵⁸ According to the SRVAW's visit to Indonesia in 1999, at the time the police still regarded DV as a private matter and did not like to intervene in what they regarded to be a private matter. UN doc. E/CN.4/1999/68/Add. 3, Mission to Indonesia and East Timor, 21-01-1999, para. 35.

⁵⁹ UN doc. E/CN.4/1997/47/Add. 2, Mission to Brazil on the issue of domestic violence, 21-01-1997, paras. 47-50.

Also the public prosecutor may lack understanding and be (too) lenient in cases of abuse in the domestic sphere.⁶⁰ Furthermore, in many States the prosecutor is hampered by the fact that DV is a criminal complaint offence which means that prosecution must be stopped as soon as the victim drops her complaint.⁶¹ In practice it is quite common that women are coerced by their partners or family to withdraw their complaint and to reconcile with their abusive husbands.⁶²

Courts may accept extenuating circumstances and be mild in their sentences of wife batterers. Sometimes justification for the violence is found in the fact that the wife was 'provocative' by not obeying her husband or that the husband was obliged to defend his or his family's honour.

A disadvantage to criminalization that the SRVAW does not mention is that having a criminal record will stigmatize not only the perpetrator, but also his family. It may also affect the husband's opportunities on the labour market which may have repercussions for the family income as worldwide men are the main breadwinners. This is all the more

true when the perpetrator is incarcerated since his income will stop altogether. Also fining a batterer will financially hurt his wife and children since the fine will have to be paid out of the family income.

While criminalization remains necessary, it is many times used as a last resort when all kinds of other measures have already been tried. This is quite understandable since most female victims of DV are not intent on ending their relationship, they just wish for the violence to stop.⁶³ They have married their partner because they loved him, and especially when children are involved women are very reluctant to break up the family.

In many States, mediation and reconciliation are promulgated, especially by religious institutions.⁶⁴ While this may be effective and desirable, there is a huge risk that victims are more or less pressurized against their wishes to stay with an abusive partner even in cases when the violence is life threatening. Furthermore, reconciliation entails that the perpetrator does not have to face any consequences for his acts and at the same time it is implied that the

⁶⁰ In Austria, the police requested the public prosecutor to arrest a known wife abuser and to detain him because it was feared that he would cause serious harm to his wife as she had uttered the wish to divorce him which would have as a consequence that he would have to leave the country. When the prosecutor refused to give his consent because he felt that arrest was a disproportionate measure, the woman was stabbed to death by her husband. CEDAW Communication No. 6/2005, 06-08-2007.

⁶¹ In the Netherlands, excellent guidelines on DV have been drawn up for the law enforcement authorities in which a zero-tolerance approach is advocated. However, implementation leaves much to be desired since 45% of all complaints related to DV are eventually dropped which makes it impossible for the prosecutor to investigate the incident further. UN doc. A/HRC/4/34/Add. 4, Mission to the Netherlands, 07-02-2007, paras. 34-35.

⁶² In Algeria, for example, family structure, culture and tradition are factors that discourage women from reporting or pressing charges. It is regarded as bringing dishonour to the family if a woman involves an outsider in family matters, even in cases of serious violence. UN doc. A/HRC/7/6/Add. 2, Mission to Algeria, 13-02-2008, para. 51.

⁶³ For instance in the Netherlands, about half of the battered women will return to their partners.

⁶⁴ In general, this is also true for Algeria but the SRVAW discovered that the two specialized women's shelters in that country offer vocational training programmes to women who not wish to return to their abusive husbands. UN doc. A/HRC/7/6/Add. 2, Mission to Algeria, 13-02-2008, para. 60

victim also bears part of the blame. That is why authorities should make certain that the victim is in fact in favour of reconciliation.

Victims who have fled the home because they no longer feel safe there have the option to go to shelters in many States. It is not always the State that creates and operates such emergency safe-houses. Often it is women's NGOs that maintain the shelters, sometimes financially supported by the State.⁶⁵ Almost everywhere the number of shelters is too small and the shelters that are available are constantly filled to capacity.⁶⁶ In countries where there are several shelters, the usual policy is to send the woman to another city for safety reasons. Normally, women can only stay a limited period in these homes while they are advised and helped to get their life back on track.⁶⁷ Preferably, there should be specific shelters for battered women and general shelters for other homeless people. If battered women and their children have to live in general shelters, together with drug addicts, alcoholics and mentally disturbed people, this may be a traumatic experience. It goes without saying that safety is the first

precondition. Addresses of safe-houses are to be kept on a need to know basis only in order to prevent harassment by vengeful (ex) partners.⁶⁸

Although shelters are an absolute necessity in cases when women feel very unsafe and no longer wish to remain in the family home and have no relatives or friends to go to, it is unfortunate that the SRVAW, like so many other international organs, States and NGOs, sees the provision of shelters as the primary protection measure for victims of DV. I cannot help but feel that this idea is in itself based on gendered ideas about ownership and the right to housing. Why would the victim be obliged to leave the family home and live in inferior or inadequate housing conditions such as in shelters, while the perpetrator continues to live in comfort in the family home?⁶⁹ Also for children this is a very unfair situation.⁷⁰ They will have to leave their neighbourhood, friends and sometimes their schools and thus are yet again victimized in addition to the traumatic experience they had to suffer of seeing their father battering their mother. States would be well advised to

⁶⁵ UN doc. A/HRC/4/34/Add. 3, Mission to Sweden, 06-02-2007, paras. 58-60.

⁶⁶ In the Netherlands, almost half of the women who seek refuge have to be turned away because the shelters are full. Only women who are Dutch nationals or who legally reside in the Netherlands have the right to admission to any of the country's 100 women's shelters. Women who are illegally in the country are turned away. UN doc. A/HRC/4/34/Add. 4, Mission to the Netherlands, 07-02-2007, para. 36.

⁶⁷ Usually the maximum period that women can stay in these safe houses is six months.

⁶⁸ In the Netherlands, e.g. addresses of safe-houses are not so difficult to obtain. Many women living in such shelters are harassed by their (former) partners who make it very unsafe for them to leave the house. In March 2004 for example, a man succeeded in tracing his wife time and again by way of accessing internet data of their common health insurance company. When he caught her in front of the fourth shelter she had taken refuge in, he killed her in front of their three children. NRC Handelsblad, 26 March 2004.

⁶⁹ Westendorp, Ingrid, 'If home is no haven: women's rights to adequate housing in cases of domestic violence', pp. 136-140, and Lünemann, Katinka, 'The legal arrangement of eviction', pp. 147-150, both in: Westendorp, I. & Wolleswinkel, R. (eds.), 2005, *Violence in the domestic sphere*, Intersentia, Antwerpen-Oxford.

⁷⁰ All over the world, in the majority of the cases where a couple is separated or divorced, the children will stay with the mother. Mothers are particularly hesitant to leave the children with a violent partner.

follow Austria's example,⁷¹ where fifteen years ago a law was adopted that makes it possible to evict the perpetrator from the family home, even if the house is rented or owned by the batterer.⁷² Such a measure may be taken for a shorter or longer period and it will be accompanied by several restraining orders forbidding the perpetrator to access the house or even the neighbourhood. Besides being fair, this legislation also has preventive effects since it clearly shows that the authorities no longer accept patriarchal values that regard the male as the head of the household and the king of the castle.

Eviction orders fall under administrative law since they are issued by the mayor as a measure of public order. This is a great advantage because a lengthy court procedure can be avoided and immediate relief can be offered. Up till now, eviction orders can only be issued for a limited time period in most cases. In the States where it is at all possible, eviction of the perpetrator is usually ordered for 10 days, a period that can be extended till four weeks at the discretion of the mayor. It is not clear, however, what will happen afterwards and how the offender will react

once he is allowed to return home since anger management courses or other therapies are only offered on a voluntary basis.

Sometimes whole families are evicted because the couple is marked as 'violent' irrespective of the fact that it is only one person who uses violence. The result is that not only the interests of the offender are hurt, but also that the wife and children are victimized.⁷³

Private law measures are often connected to divorce procedures or are taken after the divorce has been settled and the woman is still harassed by her former partner. Restraining orders see to it that the offender is banned from the home or shelter where his (ex-) partner lives, the neighbourhood, or his victim's workplace. It is also possible that he is explicitly prohibited to contact his victim and/or their children in any other way. A disadvantage of such measures is that they may take a lot of time and costs a lot of money since only courts may take such measures. Furthermore, they are mostly issued when violence has already repeatedly happened. It goes without saying that 24/7 police surveillance of the victim's home is not an option, which means that the

⁷¹ The Austrian Bundesgesetz zum Schutz vor Gewalt in der Familie (federal law to protect the family against violence) for short Gewaltschutzgesetz, got effect in 1997 and was reformed in 2000 and 2004.

⁷² Similar legislation can meanwhile be found in a few other States such as Argentina, Germany and Sweden. In the Netherlands temporary eviction of the perpetrator by the Mayor has been introduced in several towns and will become generally applicable.

⁷³ In several states of the USA, inter alia Oregon, California, Colorado, Louisiana, Massachusetts and Michigan, subsidized-housing policies have been developed that provide for affordable housing to low-income groups. To be eligible for such a housing subsidy, people have to meet with certain criteria. These include that no member of the family must have a history of criminal activity, disturbing the neighbours, or destroying property. The aim is to make housing in subsidized buildings for all tenants as safe as possible. The result is, however, that if one of the family members behaves violently, the whole family may be evicted. Eviction is possible even if the tenant was not actually arrested or convicted. In this way not only the perpetrator, but the victims of domestic violence are rendered homeless as well. Moreover, once one has been evicted it is very difficult to qualify for future housing programmes.

enforcement of restraining orders leaves much to be desired.⁷⁴

Additional measures that States have taken in the context of protecting and supporting victims of DV consist of medical care, counselling, and legal advice. The latter is useful if the victim wishes to divorce her husband and needs to claim alimony, child support and housing. Counselling may be offered to the victim to help her with post-traumatic stress disorders, but it is also possible that counselling may be offered to the batterer. This may be considered as a measure to prevent DV in future since anger-management training or some other form of therapeutic treatment is aimed at changing the husband's behaviour.

Preventive measures that may sometimes be found are the training of law enforcement and judicial officers in which they are made aware of the gender aspects of DV, and media campaigns initiated by the Government and targeted at the public at large in order to impose a sentiment of disapproval of gender-based violence.

In conclusion, it can be said that many useful and innovative measures are being taken dealing with DV, however, almost all of these measures concern *victims* of violence and are thus taken after the harm has been done. This entails that States are concentrating on symptoms rather than on root causes. That is why in the next section ways and methods are suggested that may be deployed to eradicate the main cause of

DV: the existing inequality between men and women.

G. The Way Forward

The root cause of domestic violence is the unequal socio-economic position of women which makes them dependent on their male partners and gives them insufficient bargaining power in their relationship. At the basis of this unequal position lie stereotypical views on women's and men's roles in society, age-old ideas of how women and men should behave, especially in respect of sexual relationships, and generalised ideas about which characteristics and talents each gender would possess. Obviously, these stereotypical ideas are shared by both men and women and are passed on from one generation to the next, although in many cases men will benefit from maintaining the *status quo* while women do not.

States that are parties to the main human rights treaties are under an obligation to realize both *de iure* and *de facto* equality for women and in order to achieve the latter they should take 'appropriate measures'. These obligations may among other provisions be found in articles 2 and 3 of the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights.⁷⁵ In many States, legal equality has advanced a great deal. Although exceptions may still exist as regards family law, property and inheritance laws, tax laws and legal regulations favouring the male breadwinner

⁷⁴ For instance, UN doc. A/HRC/4/34/Add. 3, Mission to Sweden, 06-02-2007, para. 57.

⁷⁵ For further interpretation of the obligations under common article 3 see Human Rights Committee, General Comment No. 28, Equality of rights between men and women (art. 3), 2000, and Committee on Economic, Social and Cultural Rights, General Comment No. 16, Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights, 2005.

model, most Constitutions and other national laws and acts are principally based on equality between the sexes. However, equality still predominantly seems to exist on paper and it has become clear that the mere adoption of rules and regulations, though a sound and indispensable legal basis, will not yield the desired result of equality in practice.

The most explicit treaty provision containing the obligation to achieve *de facto* equality is contained in article 5(a) of the Convention on the Elimination of All Forms of Discrimination Against Women (Women's Convention) which prescribes that States parties should modify existing gendered patterns of conduct of men and women with the purpose of eliminating prejudices and practices that are based on ideas of superiority or inferiority of either of the sexes or on stereotypes that award different societal roles to men and women.⁷⁶

From the example of Sweden it has become clear that gender equality in the public sphere - such as equality in education, access to the labour market and political representation - though highly important for bringing about a change for women, still is not enough to ban DV. It is the deep-rooted patriarchy determining gender roles in the private sphere which perpetuates abuse at home.⁷⁷ That is why the only feasible solution will be to bring about a change in the cultural and social make-up of society.

States will have to use extra-legal measures to cause a change in mentality.

Even the States which are most willing to improve women's socio-economic status are rather inexperienced as to how they should fulfil their obligation to achieve *de facto* equality. That is why I think that it is imperative that international organs and organizations such as

CEDAW, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, UN Habitat, but certainly also the SRVAW offer their assistance and come up with new, innovative ways and means to influence public opinion.

The SRVAW suggest breaking down persistent stereotypes by targeting children at school and even pre-school levels in order to develop male and female identities that break with traditional notions of inequality.⁷⁸ Education in general and human rights education in particular can certainly be used as a means to bring about change. A measure that has been taken in some States is deleting stereotypes from schoolbooks.⁷⁹ The traditional gendered pattern of automatically putting nearly all of the unremunerated caretaking work on the shoulders of women should be broken by making men more susceptible to and aware of the value of taking care of others. For parents, training programmes could be introduced in which it is made clear that nurturing children is not

⁷⁶ As yet, the UN Committee on the Elimination of Discrimination against Women (CEDAW) which is monitoring compliance with the Women's Convention has failed to adopt a General Recommendation explaining the scope and extent of this article.

⁷⁷ UN doc. A/HRC/4/34/Add. 3, Mission to Sweden, 06-02-2007, paras. 11 and 25.

⁷⁸ UN doc. A/HRC/4/34/Add. 3, Mission to Sweden, 06-02-2007, para. 71.

⁷⁹ The Indonesian Government mentions that it has adopted a policy to revise school textbooks, curricula, teaching and learning methods as the outcome of a gender analysis that has been conducted of the education system. UN doc. CEDAW/C/IND/4-5, Combined fourth and fifth period reports, Indonesia, 27-07-2005, para. 53.

the task of mothers alone and that fathers are as fit for bringing up their children as mothers are.⁸⁰ Paternity leave should become as common as maternity leave and employers should get used to the idea that men also have responsibilities at home. For teen-agers a period of obligatory community and social work could be introduced in order to prepare them for a future in which men and women share the responsibility for the care-taking work that has to be done to run the household and raise the children.

Of course, programmes should not only pay attention to care-giving responsibilities of boys and men, but should also target women's economic activity and autonomy. Girls and women should be made aware of the fact that, provided they get equal access to the labour market, they too bear responsibility for the financial situation of their families.

Besides education, Governments can also try to influence public opinion by making use of the media like radio and television programmes, newspapers, internet and advertising.⁸¹ In the Netherlands, the Government stimulates and financially supports television talk shows and radio

and television campaigns that bring gender role models up for discussion.⁸² Advertising campaigns are used to induce girls to choose mathematics and science in high school and opt for training programmes that will prepare them for jobs in technical professions.⁸³

Whether these measures are enough to make a significant difference remains to be seen. For instance, irrespective of all kinds of programmes and campaigns girls and women in the Netherlands keep quitting their jobs altogether or start working part time as soon as they give birth to their first child. Furthermore, the income gap between men and women has remained the same among other reasons because women are still mysteriously absent in the best paid jobs in spite of the existing equality as regards access to (higher) education.⁸⁴ It seems that many girls and women are still insufficiently aware of the economic and financial consequences for themselves and for their offspring in case they can no longer depend on their husbands because they are divorced or become widowed.

According to the SRVAW, the largest obstacle to change traditional notions about gendered roles in some societies is caused by

⁸⁰ In the same report, also in para. 53, the Indonesian Government mentions the introduction of an Early Child Care Development training programme for parents which is aimed at eliminating the stereotypical notion that women are the only persons responsible for their children's nurturing and upbringing. It is unknown, however, how effective this training programme is and how many fathers actually participate in it.

⁸¹ Holtmaat, Rikki, 2004, *Naar ander recht en beleid; De betekenis van artikel 5a VN-Vrouwenverdrag voor het uitbannen van structurele genderdiscriminatie*, Ministerie van Sociale Zaken en Werkgelegenheid, Den Haag, pp. 77-78.

⁸² For example *Mannen in de hoofdrol* (Men take the lead) a campaign on radio and television to stimulate men to do care-taking work and *Wie doet er thuis nu eigenlijk wat?* (Who is exactly doing what at home?), a talk show in which different views are discussed about men's breadwinner and care-taking responsibilities.

⁸³ So-called Postbus 51 (PO Box 51) campaigns like *Marie kiest exact* (Mary chooses science) and *Een slimme meid is op haar toekomst voorbereid* (A smart girl prepares for the future).

⁸⁴ In the Netherlands, only 45% of adult women are economically independent which means that they earn 70% or more of the legal minimum wages. The average yearly income of women is 18.000 Euro while the average income earned by men is 33.000 Euro.

the fact that identity politics movements use culture and their right to a cultural identity as a justification to restrict women's right to equality. States should therefore engage in cultural negotiations at the community level in order to support women's initiatives to question and get rid of patriarchal notions that keep women in subordinate positions and instead women should be involved in the reinterpretation of cultural identity in order for culture to also represent women's views.

From a human rights point of view it seems obvious that the State is under an obligation to target cultural habits or traditions that systematically subordinate women. Customary personal law systems that favour men at the cost of women should be brought in conformity with equality standards. Of course, a pussy-footing approach is necessary since communities must accept changes before it is possible to implement them in practice. International organizations and organs such as the SRVAW should advise States on how they could set about to eradicate adverse practices while at the same time preserve the unique identity of their culture or of ethnic groups within their State. It is important that all kinds of actors on the domestic level are included in the actual changing process. Next to local authorities, community and religious leaders, and grassroots NGOs, ordinary men and women must be involved in a discussion on how to change prevalent social structures that have detrimental

effects on women's human rights in order to bring them in conformity with equality standards that have been embraced on paper.⁸⁵

It is obvious that men will lose in some respects if society changes and women gain an equal status. Men will lose their automatic aura of leadership and status of head of the household. In financial respect men may lose as well since equality of salaries and a fair and equal division of property and inheritance will mean that many men will get less. However, men also stand to gain a lot. No longer will they bear the sole burden for the financial well-being of their families. No longer do they have to miss out on the precious moments of children growing up because they too will have time to spend at home. In an ideal and equal society it will not be necessary anymore that men work all hours in order to have a career because it will have become accepted as the norm that everyone, both men and women, have to combine their remunerated employment with care-taking responsibilities.

Women will gain a better socio-economic status and thus become more independent. The most important consequence in this context will be that they will no longer be susceptible to domestic violence. However, it will also mean that women have to take responsibility for their own and their family's financial situation. In addition, women will have to give up part of their privileges of motherhood and trust their partners to raise their children and do

⁸⁵ The idea of internal discourse combined with cross-cultural dialogue has been elaborated in various works by An-Na'im, Abdullahi Ahmed among other books in: 2002, *Cultural Transformation and Human Rights in Africa*, Zed Books, London-New York.

the household in cooperation with them.

In my opinion Ertürk puts it best when she says that worldwide we share a history of gender inequality. In response to it, we should promote a universal culture of gender equality. This is the only option to ban the scourge of women battering in all States of the globe.

H. Conclusion

In the course of the years attention for violence against women has grown considerably. Several international and national organs and organizations now concern themselves with the problem of gender-based violence and consider it a violation of women's human rights. The role of the Special Rapporteur on Violence against Women has proved to be a very important one since she has a worldwide mandate, not only to study the phenomenon of VAW, but also to look into its causes and consequences. The reports of the SRVAW contain valuable information and suggestions for improvement.

The main problem with domestic violence is that it happens in the private sphere at the hands of intimate partners. Although States are reluctant to interfere with violence in the domestic sphere, they can in fact be held co-responsible if they do not show due diligence to prevent the crime, protect the victims, or prosecute and punish the perpetrators. It has been shown that States are responding more and more to incidents of domestic violence; however, their involvement predominantly consists of protection and prosecution measures. The most important cause of domestic violence, the unequal socio-economic and power positions between men and women, is hardly ever tackled. That is why worldwide efforts should be focused on preventing gender-based violence by the abolition of gender stereotypes and traditional ideas of women's inferior status in society. It is imperative that a universal culture of gender equality is achieved. Only in a world where women can enjoy their human rights *de iure* and *de facto* will domestic violence belong to the past.

BIBLIOGRAPHY

- An-Na'im, Abdullahi Ahmed (ed.), 2002, *Cultural Transformation and Human Rights in Africa*, Zed Books, London-New York.
- CEDAW Communication No. 6/2005, The Vienna Intervention Centre against Domestic Violence and the Association for Women's Access to Justice on behalf of the descendants of Fatma Yildirim vs. Austria, 06-08-2007.
- Cook, Rebecca, 1994, 'State responsibility for Violence of Women's Human Rights', in: *Harvard Human Rights Journal*, Vol. 7, Spring.
- Holtmaat, Rikki, 2004, *Naar ander recht en beleid; De betekenis van artikel 5a VN-Vrouwenverdrag voor het uitbannen van structurele genderdiscriminatie*, Ministerie van Sociale Zaken en Werkgelegenheid, Den Haag.
- Lünnemann, Katinka, 'The legal arrangement of eviction', in: Westendorp, I. & Wolleswinkel, R. (eds.), 2005, *Violence*

- in the domestic sphere*, Intersentia, Antwerp-Oxford.
- Shachar, Ayelet, 2001, *Multicultural Jurisdictions; Cultural Differences and Women's Rights*, Cambridge University Press, Cambridge.
- Steiner, Henry J. and Alston, Philip (eds.), 2000, *International Human Rights in Context: Law, Politics, Morals*, Clarendon Press, Oxford.
- UN Convention on the Elimination of All Forms of Discrimination against Women, General Assembly resolution 34/180 adopted on 18 December 1979.
- UN doc. A/47/38, Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, 1992.
- UN doc. A/61/122/Add. 1, In-depth study on all forms of violence against women; Report of the Secretary-General, 06-07-2001.
- UN doc. A/HRC/11/6/Add.5, 15 years of the United Nations Special Rapporteur on Violence Against Women, Its Causes and Consequences (1994-2009), A Critical Review, 27 May 2009.
- UN doc. A/HRC/11/6/Add.6, Political economy and violence against women, 23-06-2009.
- UN doc. A/HRC/4/34, Intersections between culture and violence against women, 17-01-2007.
- UN doc. A/HRC/4/34/Add. 4, Mission to the Netherlands, 07-02-2007.
- UN doc. A/HRC/4/34/Add.3, Mission to Sweden, 06-02-2007.
- UN doc. A/HRC/7/6/Add. 2, Mission to Algeria, 13-02-2008.
- UN doc. A/RES/48/104, Declaration on the Elimination of Violence against Women.
- UN doc. A/RES/54/4, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 15 October 1999.
- UN doc. A/RES/56/83, General Assembly Resolution, Responsibility of States for Internationally Wrongful Acts, 28-01-2002.
- UN doc. CCPR/C/21/Rev.1/Add.10, Human Rights Committee, General Comment No. 28, Equality of rights between men and women (art. 3), 2000.
- UN doc. CEDAW/C/IND/4-5, combined fourth and fifth periodic reports of States parties, Indonesia, 27-07-2005.
- UN doc. CEDAW/C/IND/Q/5/Add.1, Responses to the list of issues and questions with regard to the consideration of the combined fourth and fifth periodic report, Indonesia, 17-05-2007.
- UN doc. E/C.12/2005/3, Committee on Economic, Social and Cultural Rights, General Comment No. 16, 13-05-2005.
- UN doc. E/CN.4/1995/42, Preliminary report submitted by the special Rapporteur on violence against women, its causes and consequences, Ms. Radhika coomaraswamy, 22-11-1994.
- UN doc. E/CN.4/1996/53, Report submitted by the special Rapporteur on violence against women, its causes and consequences, Ms. Radhika coomaraswamy, 05-02-1996.
- UN doc. E/CN.4/1997/47/Add. 2, Mission to Brazil on the issue of domestic violence, 21-01-1997.

- UN doc. E/CN.4/1999/68, Violence in the family, 10-03-1999.
- UN doc. E/CN.4/2006/61, The due diligence standard as a tool for the elimination of violence against women, 20-01-2006.
- UNdoc.E/CN.4/RES/1994/45,ommissionon Human Rights resolution: The question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women, 4 March 1994.
- UN doc. E/CN/4/1999/68/Add. 3, Mission to Indonesia and East Timor, 21-01-1999.
- Velásques-Rodriguez v. Honduras* case, Inter-American Court of Human Rights, Judgment of 29-07-1988, OAS/ser.L./V./III.19, doc. 13.
- Walker, Lenore, 2000, *The Battered Woman Syndrome*, 2nd ed., Springer Publishing Company, New York.
- Westendorp, Ingrid, 2005, 'If home is no haven: women's rights to adequate housing in cases of domestic violence', in: Westendorp, I. & Wolleswinkel, R. (eds.), *Violence in the domestic sphere*, Intersentia, Antwerpen-Oxford.
- _____, 2007 *Women and Housing: Gender Makes a Difference*, In- tersentia, Antwerpen-Oxford.