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Women, Violence and State Responsibility

**- A closer look at Sweden's obligations
under international law**

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Abstract

This thesis examines men's violence against women through the lens of relevant international legal framework in order to determine the scope of state responsibility as regards to acts of gender based violence committed by non state actors. A special focus is placed on the issues of gender based violence in Sweden and the Swedish state's responsibility to prevent such violence. In this thesis, violence against women is defined in the same manner as by the Special Rapporteur on Violence against Women, that is, as a collective term for the gender based violence against women found all around the world, in other words, violence based on the patriarchal structure of society.

The thesis firstly introduces relevant international legal entities, such as conventions, treaties and monitoring bodies connected to conventions. Thematic provisions such as the right to life are analysed in order to find how the introduced legal entities can be used to determine state responsibility on gender based violence. The situation in Sweden is then examined more closely by investigating areas of concern put forward in reports and recommendations from nongovernmental organisations and international monitoring bodies such as the Women's Committee.

Finally, a cautious conclusion is made on the responsibility of states, specifically Sweden, to respect, protect and promote the thematic rights when working against gender based violence. Within the scope of this thesis, the Swedish state in its own entity cannot be said to violate international provisions on violence against women. However, there are a number of identified areas where there is reason to question whether the Swedish state fulfils the obligation to protect its inhabitants against such violence and promote the thematic rights through channels such as education. The areas identified mostly concern post violence measures, that is, reparative actions to protect those exposed to gender based violence. Suggestions on how to improve those areas are put forward and a tentative but hopeful prediction of state responsibility evolving to also include an obligation to work with the soft values that make out the societal power structure which is the basis and nourishment for this human rights violation to continue is made.

Abbreviations and Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
DEVAW	Declaration on the Elimination of Violence against Women
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
CCPR	International Covenant on Civil and Political Rights
NGO	Non-governmental organisation
SRVAW	Special Rapporteur on Violence against Women, its causes and consequences
UN	United Nations
UNDHR	United Nation´s Declaration on Human Rights
UNGA	United Nations General Assembly
VAW	Violence against Women
WHO	World Health Organisation

”Gender-based violence is perhaps the most wide-spread and socially tolerated of human rights violations.... It both reflects and reinforces inequities between men and women and compromises the health, dignity, security and autonomy of its victims.”

(United Nations Population Fund 2005:65)

1. Introduction

1.1 Setting the context

Men's violence against women has been described as a global pandemic and every year millions of women are exposed to human rights abuses.¹ Violations of women's rights are allowed to continue, and in some countries are protected under national legislation. Gender based violence affects women of all ages, all over the world, not just in wartime but also in the everyday home environment. It occurs in all social classes, in all communities and in all cultures - and the perpetrators usually enjoy impunity. According to Amnesty International, there is cause for describing gender based violence against women as the greatest human rights scandal of our time.²

In Sweden, women of all ages and from different social and economical backgrounds are victims of gender violence. Rape and sexual assault, violence in intimate relationships, honour related violence and trafficking are examples of different forms of violence that affect mainly girls and women in Sweden.³ In 2007, the Swedish government adopted an action plan to combat men's violence against women, honour related violence and oppression, and violence in same-sex relationships. In total just over one billion Swedish kronor was invested in the project where special efforts were taken to combat honour related violence and oppression. Six main areas for preventive action were identified; (1) increased protection and support to victims of violence, (2) increased prevention work, (3) strengthened quality and efficiency of the judiciary, (4) in-

¹ See for example the UN Women report, *Progress of the World's Women – In Pursuit of Justice*, 2011-2012, United Nations Entity for Gender Equality and the Empowerment of Women, 2011, Consolidated graphics, p. 32.

² Speech delivered by Irene Khan, Secretary General, Amnesty International, International Day for the Elimination of Violence against Women, 25 November 2003, Bern, Switzerland.

³ Johansson-Latham, Gerd, *Patriarkalt våld som hot mot mänsklig säkerhet – en kartläggning av åtgärder mot patriarkalt våld och förtryck, särskilt i hederns namn, våld mot kvinnor och homo- och bisexuella samt transpersoner*, EO-Print, Stockholm, 2005, p. 18.

creased support and intervention aimed at perpetrators of violence, (5) increased collaboration, (6) increased knowledge.⁴

In the 1990s, the World Health Organisation, WHO, identified violence against women as the main reason of death and injury to women. However, it was conceptualised as a public health problem. It has not been until recent years that the idea of women's rights being also human rights has been recognised, although it would be an overstatement to say this idea has had a mainstream breakthrough.⁵

Organisations such as Amnesty International claim international law to be clear regarding the responsibility of states to do everything in their power to combat violence against women - no matter who the perpetrator is. According to these organisations, it is the duty of every state to respect, protect and enable women's human rights, as well as to prevent and investigate crimes and punish the perpetrators. States are also said to be obligated to ensure that abused women are offered support and full protection against their abusers.⁶

A number of actors in civil society, including the UN Entity for Gender Equality and the Empowerment of Women, UN Women,⁷ and Amnesty International believe that violence against women is a violation of human rights.⁸ Other actors, primarily states, instead argue that men's violence against women is to be seen as a factor that impedes women's enjoyment of human rights rather than it being an actual violation of human rights.⁹ Regardless of the exact definition, it is clear that violence against women affects women and society at large. A 1994 study by the World Bank showed that rape and domestic violence was

⁴ Action plan to combat men's violence against women, honour related violence and oppression, and violence in same-sex relationships, 2007/08:39, Regeringskansliet, 15 November 2007, Jernström offset, 2008, p. 6.

⁵ Johnsson, Holly, Ollus, Natalia, Nevala, Sami, *Violence against women – An international Perspective*, Springer, New York, 2008, p. 3-4.

⁶ Amnesty International, *Men's violence against women in Intimate Relationships – An account of the situation in Sweden*, Report, 2004, p. 4.

⁷ Previously, the UN Development Fund for Women, UNIFEM, <http://www.unifem.org/about/>, accessed on 11 May 2013.

⁸ Amnesty International, Report, 2004, p. 4. See also information from UNIFEM website, http://www.unifem.org/gender_issues/violence_against_women/, accessed on 11 May 2013.

⁹ Johnsson-Latham, 2005, p. 18.

more dangerous to women between the age of 16 and 44, than for example cancer, motor vehicle accidents and war.¹⁰

In this thesis, the aim is to look into crimes which are often committed in the private sphere and by private, non-state actors. It is clear that violence against women, deadly and non-deadly, is a violation of Swedish criminal law. However, could the same act, punishable by Swedish law also mean a violation of the human rights as put forward in for example the European Convention on Human Rights, ECHR, or the UN charter? Is every gender based act of violence also a violation of international human rights? What are the obligations of Sweden regarding prevention, prosecution and compensation for gender based violence committed by non-state actors?

1.1.1 Why Sweden

Sweden was one of the first countries in the world to ratify the Convention on the Elimination of all Forms of Discrimination against Women. This was 1980 and the Convention entered in to force in Sweden in September 1983. This along with other factors such as Sweden having one of the most progressive legislation on the matter of men's violence against women in the world¹¹ makes Sweden a somewhat unexpected choice for this analysis. The idea came surfaced when looking through Gerd Johnsson-Latham's pandect on patriarchal violence where a diagram served to indicate different motives behind violence against women; violence against women in the name of honour, violence against homosexual, bisexual and transgender persons and patriarchal violence against heterosexual women. Noting that violence against women in Sweden is not mainly a problem associated with honour cultures or due to anti-LGBT motives, but rather a result of the patriarchal social structures in Swedish society it was made clear that violence against women is not a phenomenon occurring someplace else, to "other" people.¹²

¹⁰ Heise, Lori L, Pitanguy, J, Germain, A, World Bank discussion papers, *Violence against Women – The Hidden Health Burden*, The World Bank, Washington D.C., July 1994, p. 17.

¹¹ Amnesty International, 2004, p. 4.

¹² It should however be noted that studies have shown that men of higher education was approximately 40 percent less likely to perpetrate gender based violence than a less educated

When investigating the assumptions made in Sweden concerning the typical perpetrators of gender based violence, they are believed to be immigrants, drug or alcohol abusers or men of lower social status such as low education.¹³ These ideas of violence against women being a problem of “somebody else”, not applicable or present in the life of the average Swede are however refuted in the Swedish report *Captured Queen (Slagen dam)*, where 7 000 women aged 18-64 answered questions about their experiences of violence.¹⁴ It is to date the largest prevalence study on men’s violence against women in Sweden.¹⁵

Amnesty International also points this out in their report from 2004, *Men’s violence against women in Intimate Relationships – An account of the Situation in Sweden*. According to Amnesty, men’s violence against women represents an extremely serious human rights problem in Sweden.¹⁶ The fact that the general perception of who is the typical perpetrator and victim in cases of gender based violence does not in fact correspond with reality, affects not only society at large, but in particular actors within the judicial system such as lawyers, judges and prosecutors. These perceptions are not only symptoms of our time but also help to reinforce the inequalities at the root of the problem.¹⁷ This view is connected to the claim made further on that it is not sufficient to only look at the law, but at the social structures and attitudes which affects the application of the law, the decisions of women in violent relationships and the attitudes of perpetrators.

man, other factors such as alcohol abuse were also identified but more research is required, World Health Organisation with London School of Hygiene and Tropical Medicine, *Preventing intimate partner and sexual violence against women: Taking action and generating evidence*, Geneva, 2010, p. 19 and 31.

¹³ Amnesty International, 2004, p. 28.

¹⁴ Lundgren, Eva, et al, *Slagen dam, Mäns våld mot kvinnor i jämställda Sverige – en omfångsundersökning*, The Swedish Crime Victim Compensation and Support Authority (Brottsoffermyndigheten) and Uppsala University, Åströms tryckeri AB, Umeå, 2001, p. 71-72.

¹⁵ Information on the study “Slagen dam” from the website of The Swedish Association of Women’s Shelters and Young Women’s Empowerment Centres (Sveriges Kvinno- och tjejjourers riksförbund), <http://www.kvinnojouren.se/slagen-dam-mans-vald-mot-kvinnor-i-jamstallda-sverige-en-omfangsundersokning>, accessed on 12 March 2013.

¹⁶ Amnesty International, 2004, p. 5.

¹⁷ Gracia, E and Herrero, J, *Acceptability of Domestic Violence against Women in the European Union: A Multilevel Analysis*, Journal of Epidemiology and Community Health, 2006, p. 123.

In June 2006, the UN Special Rapporteur on violence against women visited Sweden in order to address the discrepancy between the apparent progress in achieving gender equality and the continuous reports of violence against women. She found that Sweden did in fact comply with the international commitments regarding legal framework, that is, the Swedish law corresponds to the requirements set out in CEDAW, or the “Women’s Convention”. However, the practical implementation by Swedish authorities did not match the legal framework.¹⁸ In other words, the authorities and government bodies did not execute the law in the way it was intended. This would mean legislative measures are not enough to meet the international requirements when dealing with violence against women. This view is also consistent with the Special Rapporteur previous declaration that States in general must address the structural causes that lead to gender based violence in order to comply with their due diligence.¹⁹ This thesis will therefore focus mainly on the execution of Swedish legislation rather than the legal framework itself.

1.2 Objective

This thesis aims to examine men’s violence against women through the lens of relevant international legal framework in order to determine the scope of the Swedish state’s responsibilities to prevent acts of gender based violence committed by non state actors.

1.3 Research question

What are the relevant international instruments when looking at violence against women as a human rights violation and what state obligations can be identified through those instruments? Does Sweden meet the requirements for active and proactive work against gender based violence imposed by the international legal instruments to which Sweden is bound?

¹⁸ Report of the UN Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk – Mission to Sweden, A/HRC/4/34/add.3, 6 February 2007.

¹⁹ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/20/16 p. 4.

1.4 Method and Delimitation

By examining data from different organizations, states and other actors and comparing the results to provisions of the international legal entities Sweden is bound by, the hope is to clarify the scope of state responsibility on gender based violence against women in Sweden. To this end, the question if state responsibility ends with taking legislative actions or if the state is also responsible for changing societal structures causing gender based violence is examined.

Statistics are primarily obtained from international organisations relevant to the issues at hand, country reports and the Swedish Crime Prevention Council, Brottsförebyggande rådet. By also accounting for different views and opinions on how violence against women is defined, a more nuanced and balanced discussion can hopefully be achieved.

The practical implementation of the international legal framework used when discussing violence against women is analysed through cases, some are investigated more in depth while others are mentioned in passing. To deliver an insight into the situation in Sweden, relevant legislation is examined and compared to how the law is practically enforced.

This thesis is limited to investigating the patriarchal violence against women, primarily in Sweden. In some cases, comparisons and references are made to other countries; the aim is however not for this to be a comparative study of countries legislation on violence against women. Such comparisons are only made to highlight certain issues or to emphasize arguments and counterarguments.

Also, the question of so called “double discrimination” or “intersectionality”, where some women are more vulnerable to being exposed to discriminating treatment due to factors such as class, ethnicity, sexual orientation and disability, will not be examined in this thesis. This is not due to lack of interest or importance but rather limitations of time and scope.

1.5 Structure and content

This thesis is divided into chapters and subchapters where each chapter ends with a short conclusion.

Following this introductory chapter, chapter 2 offers a historic background on the emergence of women's rights on the international arena. The chapter then continues with an introduction to some of the conventions and treaties Sweden has ratified which are relevant to the question at hand.

Chapters 3 to 5 examine thematic provisions; the right to life, the prohibition of torture as well as the ban on discrimination and their applicability on the subject of gender-based violence. Where relevant, case law is presented to further deepen the analysis.

With the point of departure in the Convention on the Elimination of all Discrimination against Women, chapter 6 looks at the concept of due diligence and the extent of the state's responsibility to take positive measures to combat violence against women. Recommendations made by the Women's Committee connected to the convention as well as case law are presented to clarify the scope of state responsibility on a practical level.

A closer examination of a few topical issues identified in Sweden is presented in chapter 7. These are connected to the thematic provisions examined in chapter 3 to 5 as well as the due diligence provision examined in chapter 6. The analysis presented is based on the state's obligation to respect, protect and promote the rights of its inhabitants.

Chapter 8 terminates this thesis with a summary and conclusion as well as thoughts on possible steps forward regarding implementation and practical reforms of structural, procedural and legislative nature. Suggestions mentioned combine both private thoughts and recommendations made by official actors such as non-governmental organisations.

1.6 Something on terminology and statistics

There is no uniform definition of “violence against women” in international law and terms such as gender based or gender related violence has been used synonymously to violence against women. “Men’s violence against women” has been less utilized, possibly due to fear of stigmatising men.

In article 1 of the Declaration on the Elimination on all Violence against Women, DEVAW, from 1993, violence against women is defined as;

“Any act of gender-based violence that results 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 in private life.”

In this thesis, violence against women is defined in the same manner as by the Special Rapporteur on Violence against Women, that is, as a collective term for the gender based violence against women found all around the world, in other words, violence based on the patriarchal structure of society.²⁰

It should be noted that both these definitions refer to gender based violence without further defining “gender based”. Some claim that this excludes many forms of violations aimed at women, where gender may not be the cause of or ground for a particular act of violence.²¹ However, since the objective of this analysis is not to investigate all forms of violence against women, but rather the violence caused by the patriarchal structures in society, this objection is not relevant in regards to this thesis. The issue of separating gender based violence from violence against women where the cause for the violence was not gender based is further discussed below.

²⁰ UN Commission on Human Rights (now the UN Human Rights Council), Special Rapporteur on Violence against Women, Its Causes and Consequences (SR-VAW), UN doc. E/CN.4/RES/1994/45, 4 March 1994.

²¹ Edwards, Alice, *Violence against women under international human rights law*, Cambridge University Press, New York, 2011, p. 21.

For practical reasons, patriarchal violence, gender based or gender related violence and violence against women shall be used interchangeably throughout the text.

The importance of accurate statistics when measuring and comparing violence against women is of course of overt importance. In 1995, the Beijing Platform for Action stressed the significance of reliable statistical data and its importance in the efforts of understanding and working to eliminate violence against women. The UN Secretary General ordered a study on all forms and manifestations of violence against women in 2006. The study concluded that reliable statistical data was needed and states were recommended to strengthen their efforts in collecting and analysing relevant data.²²

It is however not only the lack of a uniform system for collecting data on violence against women that poses a problem. Today, a majority of victims do not seek the help of the police or other government authorities. Varying factors such as shame, cultural attitudes and fear of the offender or the reaction of family and friends, obstruct women to for example file a complaint and therefore they do not appear in official statistics.²³ There is also the problem of many cases of violence against women not only going unreported, but being unnoticed or un-investigated or recorded. Amongst those are murders covered up as accidents or suicide and abortions of female foetuses and killings of new born girls.²⁴

The same issues mentioned when discussing how to define violence against women are also relevant when discussing statistics. It is problematic to sort violence against women under the epithet “gender based violence”, as it is difficult to prove the background and reasons for violence in each and every individual case. When looking at a separate case, many individual factors, possibly not related to gender power structures in society, played part in what took place. It is only when taking a step back and looking at the statistics from a

²² Johnsson et al, 2008, p. 10.

²³ Ibid, p. 10 ff.

²⁴ Johnsson-Latham, 2005, p. 35.

wider point of view we see gender based violence as a part of the wide spread oppression of women. Some even claim this is the only way to understand violence against women in intimate relationships (domestic violence).²⁵

Although the assumption that all violence against women in intimate relationships and in the public sphere is based on this structural oppression of women can be criticised for being difficult to fully prove in the individual case, it is a necessary generalisation in order to put forward a valuable analysis on the topic. What speaks in favour of adopting a structural approach in investigating gender based violence is the fact that this sort of violence is present in all parts of the world.²⁶ The fact that this approach has also been adopted by states, NGO's and international political bodies such as the United Nations also serves as an indicator that this is a legitimate basis for analysing the problem at hand.²⁷

There is the obvious problem of distinguishing violence directed at men and women from gender based violence against women where the intention, conscious or subconscious, is to exert power over women based on a patriarchal social system ingrown in society. How do you prove that a violent act against a woman was in fact an act of gender based violence and not just an act of violence based on some other intention? In order to handle the issue of proving the causes of violence, this thesis narrows down the term "violence" to include only men's violence against women in close relation where the social structure of men seen as dominant and women as inferior is the most obvious. This means dealing mainly with violence in the private sphere. There are of course violent acts aimed at women also in the public sphere based on gender inequal-

²⁵ Choudry, S. and Herring, J., *Righting Domestic Violence*, International Journal of Law, Policy and the Family, number 20, 2006, p. 111.

²⁶ *Ibid*, p. 112.

²⁷ See for example the Swedish Action plan to combat gender based violence, *supra note 4*, p. 10, Amnesty International's report, 2004, p. 6-7 and the UN Special Rapporteur on Violence against Women, *Summary Paper on the State responsibility for eliminating violence against women*, <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/VAW.aspx>, accessed on 12 May 2013.

ity, rape being the most obvious one. However, the scope of this thesis does not have the capacity to also deal with this other than in passing.

Feminist scholars have pointed out that since the emergence of the state as we know it today; men have been the prime actors in the public sphere whereas women have taken their place in the private quarters of the home. Feminist legal scholars argue that this has led to the legal system being developed from the preferences of the people in charge, namely men with the focus mainly concerning the public sphere. This has resulted in large parts of the private sphere being left unregulated. There has for example been a disinclination to question men's right to foster his family as this is an area within the private sphere. This also translated to the international legal system where initially, only state to state matters were dealt with.²⁸

2. International legal framework

In this chapter, four international legal instruments relevant to the topic at hand are briefly introduced. Only two specifically concern the rights of women, the Convention on the Elimination of all Forms of Discrimination of Women, CEDAW, which is also the only convention that lacks an actual provision on banning violence (against women), and the mandate of the Special Rapporteur on Violence against Women. However, let us begin with a short background on the evolution on women's right on the international scene.

2.1 The evolution of Women's rights

Women have formally been entitled to equality before the law and equal protection of the law in all major human rights treaties since 1945. But, as mentioned earlier it was not until the 1990s that violence against women featured seriously on the agenda of the international community. Some argue that the mid-1990s make up the defining moment for serious violations of women's rights being considered on a larger scale. Focus in the 1990s was especially

²⁸ Edwards, 2011, p. 64-65.

centred on violence against women in armed conflict such as Rwanda and Yugoslavia where women were raped, battered and tortured as part of the military and political strategies of the warring parties. Previous to the 1990s however, violence against women was generally not perceived as a matter of international importance but rather as something to be handled on a national level through the respective criminal legislation.²⁹ Even during the global women's conferences in 1975 and 1980, violence against women was an issue of little significance as it was viewed as a family matter not to be regulated by international legal documents.³⁰ One exception to this somewhat reserved attitude was the 1980 global conference on "battered women and violence in the family" where domestic violence was defined as "an intolerable offence to the dignity of human beings".³¹

2.2 The Universal Declaration of Human Rights

The Universal Declaration of Human Rights was the result of the international community wanting to avoid the atrocities of the Second World War from being repeated. On 10 December 1948 the then 18 members of the UN General Assembly adopted the declaration and vowed to never again allow that sort of violence and brutality to occur.³² The declaration was adopted in a non binding form and is therefore not legally binding in itself but rather a symbol of a commitment by the international community.³³ Today however, the Declaration is arguably an expression of international customary law and has since the adoption in 1948 been the inspiration of many binding conventions and treaties drawing on its substance.³⁴ Unlike the other legal entities investigated here, the declaration is not connected to a committee or court such as the European

²⁹ Edwards, 2011, p. 7.

³⁰ Engle, Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice*, University of Chicago Press, 2006, p. 21.

³¹ World Conference on Women, Equality, Development and Peace, Copenhagen, 1980, UN Doc. A/CONF.94/35, 19 September 1980, p. 67.

³² Information on UNDHR background from UN website,

<http://www.un.org/en/documents/udhr/history.shtml> accessed on 14 April, 2013.

³³ Bring, O, Mahmoudi, S. and Wrangé, P, *Sverige och folkrätten*, Nordstedts Juridik, Stockholm, ed 4:1, 2011, p. 205.

³⁴ Ibid, p. 30. See also, information on the legal status on the UNDHR from UN website, http://www.un.org/en/documents/udhr/hr_law.shtml, accessed on 16 April 2013.

Court of Human Rights, the ECtHR, overlooking the adherence to the declaration.

Article 1 of the Universal Declaration of Human Rights states that,

“[a]ll human beings are born free and equal in dignity and rights...”

The declaration consists of a preamble and 30 articles recognising the human rights and fundamental freedoms to which everyone, man and woman, is entitled. Article 2 of the convention further underlines the non-discriminatory nature of these rights and forbids distinction such as race, colour and sex to hinder anyone’s enjoyment of these rights. It is on the basis of the philosophy of every man and woman’s equal and unwavering rights that we later on will examine article 3 of the convention, the right to life. Article 3 is somewhat of a cornerstone of the convention as it is a right essential to all other rights.

Although the right to life under article 3 is perhaps the most basic of the rights found in the bill of human rights, it is not without limitations (the most obvious and debated being the death penalty). The traditional interpretation of the article is the protection of citizens from arbitrary and summary deprivation of life.³⁵ While the right to life remains to be considered the duty of the state to refrain from unlawful killings as well as a duty to investigate and prosecute such unlawful acts, it has evolved from the more restrictive sense to also encompass the right to a dignified living standard and also a due diligence responsibility for the state to work proactively with these questions.³⁶

2.3 The European Convention on Human Rights – ECHR

International obligations through ratification of conventions are only directly applicable in courts and government bodies once they have been integrated in Swedish law. This is generally done by incorporation or transformation with the latter being the most common method in Sweden. The European Conven-

³⁵ Edwards, 2011, p. 264.

³⁶ Ibid.

tion on Human Rights, ECHR, was however incorporated into Swedish law in its entirety in 1995 and is therefore directly enforceable in the Swedish judicial system.³⁷ As opposed to the non binding recommendations of the Special Rapporteur on Violence against Women, the European Convention of Human Rights, ECHR, is legally binding for all member states of the Council of Europe which in April 2013 was 47 countries.³⁸ The member states are also bound by the ruling of the European Court of Human Rights and the Court can declare states having acted in violation of one or more articles of the convention.³⁹

2.4 CEDAW and OPCEDAW

The Convention on All Forms of Discrimination against Women, CEDAW, was adopted in 1979 and entered into force in 1981.⁴⁰ An explicit prohibition of violence against women was however not incorporated into the text. Ten years later, in what has been called a “landmark decision for women”, the Optional Protocol to the Convention on the Elimination of all Forms of discrimination against Women was adopted, without a vote, by the General Assembly. Through the ratification of the Optional Protocol states recognised the competence of the Committee on the Elimination of Discrimination against Women to “receive and consider complaints from individuals and groups within its jurisdiction”.⁴¹ The Committee has since declared in a number of general recommendations that violence against women is a form of sex discrimination and therefore falls under the mandate of CEDAW.⁴² It should be noted that these recommendations are not legally binding documents.⁴³

³⁷ UN Universal Periodic Review (UPR): Sveriges nationella halvtidsrapport, 19 June 2012, 2012/2841/DISK, p. 7.

³⁸ Information on member states from Council of Europe website, www.coe.int, (tab 47 countries), accessed on 13 April 2013.

³⁹ Bring et al, 2011, p. 121-113.

⁴⁰ Convention on the Elimination of All Forms of Discrimination against Women 1979, General Assembly resolution 34/180, 18 December 1979, 1249 UNTS 13; entered in to force 3 September 1981 (CEDAW).

⁴¹ Information on the Women Committee’s jurisdiction from UN website, <http://www.un.org/womenwatch/daw/cedaw/protocol/>, accessed on 12 April 2013.

⁴² Edwards, 2011, p. 140.

⁴³ Johnsson-Latham, 2005, p. 17.

2.5 SR CEDAW – Non-binding but important

More than ten years after CEDAW entered in to force, the UN Declaration on the Elimination of Violence against Women, DEDAW, was adopted⁴⁴ and in 1994, the first ever Special Rapporteur on Violence against Women was inaugurated.⁴⁵ The mandate of the Special Rapporteur has since been extended by the Commission of Human Rights on several occasions, lastly in 2011.⁴⁶

In accordance to her mandate, the Special Rapporteur is requested to;

- (a) Seek and receive information on violence against women, its causes and consequences from Governments, treaty bodies, specialized agencies, other special rapporteurs responsible for various human rights questions and inter-governmental and non-governmental organizations, including women's organizations, and to respond effectively to such information;*
- (b) Recommend measures, ways and means at the local, national, regional and international levels to eliminate all forms of violence against women and its causes, and to remedy its consequences;*
- (c) Work closely with all special procedures and other human rights mechanisms of the Human Rights Council and with the treaty bodies, taking into account the request of the Council that they regularly and systematically integrate the human rights of women and a gender perspective into their work, and cooperate closely with the Commission on the Status of Women in the discharge of its functions;*
- (d) Continue to adopt a comprehensive and universal approach to the elimination of violence against women, its causes and consequences, including causes of violence against women relating to the civil, cultural, economic, political and social spheres.*

⁴⁴ UN Declaration on the Elimination of Violence against Women, General Assembly resolution A/RES/48/104, 20 December 1993.

⁴⁵ UN Commission on Human Rights (now the UN Human Rights Council), Special Rapporteur on Violence against Women, Its Causes and Consequences (SR-VAW), UN doc. E/CN.4/RES/1994/45, 4 March 1994.

⁴⁶ Information on Special Rapporteur of CEDAW's mandate from UN website, <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>, accessed on 11 May 2013.

The Special Rapporteur executes these duties through, for example, country visits and annual thematic reports.⁴⁷ The next report by the Special Rapporteur will be a study on the "State responsibility for eliminating violence against women".⁴⁸

The reports and statements of the Special Rapporteur are not binding legal documents per se, but still of significant and influential importance.⁴⁹ There are no legal repercussions for states choosing not to adhere to the recommendations made in these reports.

In the past, due diligence analysis concerning violence against women has focused mainly on reparative response from the state after the violent act has already occurred. These responses have included legislative reform, access to justice and making care services available. In 2006, the then Special Rapporteur, Yakin Ertürk published a report on due diligence not only being applicable when compensating or caring for women already exposed to violence but also for proactive work to eliminate violence against women through (a) prevention, (2) protection, (3) punishment and (4) reparations.⁵⁰

2.6 Conclusion – Legal framework

The legal framework presented in this thesis is limited when looking at the vast variety of conventions, treaties and other initiatives relevant to the issue at hand. There are also many actors such as government bodies and non-governmental organisations, combating violence against women on both a national and international level. As we will see in the following chapters the problem facing the UN's operative work is that the efforts made are limited,

⁴⁷ Information on SR duties from UN website, <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>, accessed on 14 April 2013.

⁴⁸ Information on SR reports from UN website, <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/VAW.aspx>, accessed on 14 April 2013.

⁴⁹ Edwards, 2011, p. 9.

⁵⁰ Summary Paper on the State responsibility for eliminating violence against women, downloaded from <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/VAW.aspx>, accessed on 12 May 2013.

fragmented and poorly coordinated. For example, the special Rapporteur pointed out the fact that the international community had not agreed on any benchmarks or indicators for assessing potential progress on preventing violence against women.⁵¹ Also, too little attention is focused on the perpetrators and the underlying structural causes behind gender-based violence. Instead, the UN legal framework has mainly focused on the extreme forms of violence against women such as violence in wartime and female genital mutilation.⁵²

3. Violence against women and the right to life

In this chapter, we will look at the right to life and how that provision, found in for example the UN Declaration of Human Rights, UNDHR, the International Covenant on Civil and Political Rights, CCPR, and the European Convention of Human Rights, ECHR, might be applicable to the issue of both fatal and non-fatal gender based violence.

3.1 Legal framework of the right to life

Article 3 of the UNDHR states that:

“Everyone has the right to life, liberty and security of person.”

In 1976, article 3 of the Universal Declaration of Human Rights was transposed to article 6 of the International Covenant on Civil and Political Rights and in the process it gained in amplitude. Here we will look at the two articles in conjunction since they draw on each other. The first item of article 6 of the CCPR, which is the only one examined here, states that:

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his [or her] life”.

⁵¹ Edwards, 2011, p. 11.

⁵² Johnsson-Latham, 2005, p. 69.

Despite these peremptory norms having *jus cogens* status in international law they are not absolute or unlimited, the death penalty being one of the most debated exceptions of the right to life. Some have claimed that the state is obligated to protect an individual's right to life in law specifically but not necessarily in practice, in other words; states only have the responsibility to legislate in accordance to the provision of the right to life, not to promote the right in a more proactive manner.⁵³ Taking legislative action in accordance to article 3 (or 6 of the CCPR) is however interpreted to be more of a minimal obligation rather than the only one regarding states responsibilities to protect the right to life. The Human Rights Committee expressed in their general comments that the right to life should not be interpreted restrictively. Instead, the Committee encourages states to adopt positive measures in order to protect the right to life.⁵⁴ An example would be the Inter-American Court of Human Rights stating that Mexico was in violation of the right to life after having failed to investigate three women's disappearances and murders due to discriminatory attitudes from the responsible authorities.⁵⁵

Another limitation of the right to life as put forward in article 6 of the CCPR is the wording of the provision as regards the state's arbitrary deprivation of an individual's life. The wording of this provision results in a somewhat unequal applicability for men and women. The right to life holds very different meaning as regards men and women. Men, more often subjected to the death penalty and suffering the consequences of being soldiers in armed conflicts, are over-represented when looking at the arbitrary deprivation of life by the state.⁵⁶ Women on the other hand are more often exposed to threats of violence from non-state actors and the risk of suffering as a result of the lack of investments by the state to secure their health. Rather than suffering from the direct violence of the state, women more often are subjected to risk of threats to their

⁵³ See e.g. Novac, Manfred, *UN Covenant on Civil and Political Rights: CCPR Commentary*, 2nd ed, Kehl: Engel, 2005, p. 122.

⁵⁴ Human Rights Committee, General Comment No. 6: The Right to Life (Article 6), HRI/GEN/1/Rev.1, 1982, paras. 1 and 5.

⁵⁵ González et al ('Cotton Field') vs. Mexico, Inter-American Court of Human Rights, Preliminary Objection, Merits, Reparations and Costs, Ser. C No. 205 (16 November 2009).

⁵⁶ Edwards, 2011, p. 278.

lives in connection to giving birth or due to economic disadvantage leading to poverty and famine.⁵⁷ The article, in its traditional sense does therefore not take threats to women's lives into account, it is a male-oriented norm.

An equivalent right to life provision of the Universal Declaration of Human Rights is not found in CEDAW.⁵⁸ In the Declaration on the Elimination of Violence against Women, DEVAW, it is however mentioned in article 3 which states that;

“Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include inter alia: (a) the right to life...”

In order to establish the scope of the right to life norm, one must determine what acts are in fact life-threatening. Domestic violence in itself is for example not regarded a life threatening act but rather an issue of inequality and violence.⁵⁹ It is clear that a violent act requires some level of gravity to be seen as a life-threatening act. However, a definite answer to what that might be is yet to be determined.⁶⁰

In a case of domestic violence with a fatal outcome, *Opuz vs. Turkey*,⁶¹ the ECtHR found the state to be in violation of article 2 of the ECHR, the right to life, as the woman's life had not been sufficiently protected with regards to the knowledge the police had about the perpetrators previous behaviour.⁶² The applicant and her mother were both subjects of repeated assaults and threats from the applicant's husband. The women sustained life threatening injuries but the man was only prosecuted once after having stabbed his wife seven times. The man was fined the equivalent of 385 Euros. The Turkish state

⁵⁷ Edwards, 2011, p. 279.

⁵⁸ Ibid, p 269.

⁵⁹ Ibid, p 296.

⁶⁰ Ibid, p 296.

⁶¹ *Opuz v. Turkey*, Application No. 33401/02, 9 June 2009, Council of Europe: European Court of Human Rights.

⁶² Ibid, paras. 133-136.

claimed that the lack of prosecution was due to the women withdrawing their complaints which the women in turn maintained they had only done after threats from the husband or after being convinced by the police to do so. The women filed numerous complaints without any result but finally decided to try to move. The man then shot dead his mother in law claiming his honour was at stake. He was convicted of murder and sentenced to life in prison. However he was released awaiting his appeal and the woman filed more complaints of him harassing and threatening her.

In accordance with the ruling in *Opuz vs. Turkey*, the right to life does not only encompass the right not to be arbitrarily deprived of your life, it also extends “in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual”.⁶³ Although this remains the focal point of article 6 of the CCPR as well as the ECHR, threatening and depriving someone of their physical integrity can also be said to fall under the scope of the provision. This includes acts by non-state actors if the state fails to adhere to its due diligence.⁶⁴

In its concluding observations on Peru the Human Rights Committee stated that laws relating to rape, sexual abuse and violence against women must provide women with effective protection.⁶⁵ According to the Committee, “violence against women remains a major threat to their right to life and needs to be more effectively addressed”.⁶⁶

In *Villagrán-Morales et al. Guatemala*, the Inter-American Court of Human Rights held that the right to life, according to the Inter American Convention of Human Rights, includes, “not only the right of every human being not to be

⁶³ *L.C.B. vs. the United Kingdom*, Case No. 14/1997/789/1001, 9 June 1998, the European Court of Human Rights, para. 36. *Osman vs. the United Kingdom*, Case No. 87/1997/871/1083, 28 October 1998, the European Court of Human Rights, para. 115, and *Kontrová vs. Slovakia*, Application No. 7510/04, 31 May 2007, the European Court of Human Rights, para. 49.

⁶⁴ *Opuz v. Turkey*, para. 128.

⁶⁵ HRC, Concluding observations on Peru, UN Doc. A/52/40, Vol 1, 1997, para. 167.

⁶⁶ HRC, Concluding observations on Colombia, UN Doc. A/52/40, Vol 1, 1997, para. 287.

deprived of [his or her] life arbitrarily, but also the right that he [or she] will not be prevented from having access to the conditions that guarantee a dignified existence”.⁶⁷ However, the extension of the right to life provision to also encompass a level of dignity and quality of life has mainly concerned issues such as maternal mortality rates and HIV/AIDS.⁶⁸

3.2 Men’s deadly violence towards women in Sweden

According to The Swedish National Council for Crime Prevention, about 95 people every year are victims of deadly violence in Sweden.⁶⁹ On the agency’s website it is explained that deadly violence is most often committed in the privacy of the home. According to a 2013 report by the non-government organisation *Tryggare Sverige*, somewhere between 13 and 20 women are killed every year as a result of violence in intimate relationships.⁷⁰ Studies on deadly outcomes of domestic violence show that most deaths occur when the woman starts the process of leaving the relationship.⁷¹

In 2011, the National Board of Health and Welfare (Socialstyrelsen) was appointed to put forward an investigation on deaths as a result of violence in intimate relationships as part of the Swedish action plan to combat violence against women.⁷² The Board has since published an annual report of anonymous cases of fatal domestic violence. The Swedish Women’s Lobby is of the opinion that the Board has not fulfilled its assignment and that in order for it to do so each murder needs to be investigated individually.⁷³

⁶⁷ *Villagrán-Morales et al. sv. Guatemala* (the ”Street Children” case), Inter-American Court of Human Rights, Ser. C., No. 63 (19 September 1999), para. 144.

⁶⁸ Edwards, 2011, p. 301.

⁶⁹ Statistics from, <http://www.bra.se/bra/brott--statistik/mord-och-drap.html>, accessed on 12 April 2013.

⁷⁰ Strandell, Peter, with Stiftelsen Tryggare Sverige, *Dödligt våld mot kvinnor – Om myndigheternas förutsättningar att förhindra brott i nära relationer*, Rapport 2013:1, p. 6.

⁷¹ Meyerfield, B., *Domestic Violence, Health and International Law*, Emory International Law Review number 22, 2008, p. 62.

⁷² Action plan to combat men’s violence against women, honour related violence and oppression, and violence in same-sex relationships, 2008, p. 42.

⁷³ Swedish Women’s Lobby report, *Vad gör regeringens för kvinnors rättigheter? En uppföljning av FN:s Kvinnokommittés rekommendationer*, Printografen, Halmstad, 2012, p. 20.

As a response to what was believed to be an all too generic and non-investigative approach, the organisation *Tryggare Sverige* put together a group of specialists to go through every single case of deadly violence in intimate relationships. The result of the report, which is based on records of preliminary investigations and court verdicts, shows that the deadly outcome in some cases could have been prevented if government bodies had reacted differently. The report shows that not even a third of the women were the object of a police report at the time of their deaths. It is more often the case that the woman contacts other government agencies rather than the police. In 60 percent of the cases the women had been in contact with social services but very rarely the women reported their partner to the police.⁷⁴ Only in 30 percent of the cases, the woman or someone close to her reported the perpetrator. The report also points out that a large part of the women, 75 percent, had been in contact with the health care system where the personnel could have noted the violence. But it is not only the victims of fatal violence who tends to seek contact with different government bodies, the perpetrators follow the same pattern. According to a report from the National Council for Crime Prevention up to 90 percent of the men who were convicted of killing a woman with whom they were in a relationship were mentally ill or unstable and had been in contact with health care personnel due to their problems.⁷⁵

A main issue for establishing the scope of state responsibility as regards preventing fatal violence is the unpredictability of human behaviour. This uncertainty of a person's potential actions makes it difficult to impose state responsibility for pre-emptive measures to prevent such violence. In order for states to be obligated to take on such responsibility, it must be proven that the authorities had knowledge, or should have had knowledge, of a real and immediate risk of fatal violence against one identifiable individual by another person.⁷⁶

⁷⁴ Strandell, Peter, with Stiftelsen Tryggare Sverige, 2013, p. 23.

⁷⁵ Mikael Rying, *Utvecklingen av dödligt våld mot kvinnor i nära relationer*, rapport 2007:6, Brottsförebyggande rådet, Västerås, p. 7.

⁷⁶ *Opuz vs. Turkey*, para. 129 and *Osman vs. The United Kingdom*, para. 116.

The organisation, *Tryggare Sverige* claims the result of the studies mentioned here suggests that healthcare personnel are important key-actors in the effort to prevent crime in close relationships. Those employed at say hospitals, youth care centres and mental clinics should therefore be required to have both general knowledge of potential risk factors for future crimes in close relationships and specific knowledge on identifying patients (victims and perpetrators) who display symptoms of mental illness or instability.⁷⁷

3.3 Conclusions – Gender based violence and the right to life

Although the more traditional interpretation of the provision of the right to life seems to prevail, there appears to be some consensus that this right should not be too constrained. It is however continuously unclear exactly what constitutes a breach of the right to life. What speaks in favour of a more extensive interpretation of the right to life provision are the many statements made by the Human Rights Committee addressing violence against women as applicable under the right to life provision.

Efforts are however made to untangle the somewhat unclear obligations of state parties. For example, the Special Rapporteur on Violence against Women has set out to identify “indicators” for state performances when dealing with violence against women.⁷⁸ This can be used to both guide states in the right direction but also assess their progress made. The legal status of such indicators is still unclear. However, most seem to agree that there are now positive obligations on the state to protect women from domestic violence.⁷⁹

As regards Sweden and how the state complies with its international obligations, it should not be enough to invest resources in the police force, especially when statistics tell us women at risk as well as perpetrators of gender based

⁷⁷ Strandell, Peter, with Stiftelsen Tryggare Sverige, *Dödligt våld mot kvinnor – Om myndigheternas förutsättningar att förhindra brott i nära relationer*, Rapport 2013:1, p. 23.

⁷⁸ Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Indicators on Violence against Women and State Response, UN. Doc. A/HRC/7/6/, 29 January 2008.

⁷⁹ See e.g. Reid, Karen, *A practitioner's guide to the European Convention on Human Rights*, 4th ed., Sweet & Maxwell, London, 2011, p. 373.

violence more often turn to other agencies such as the health care system or social services. In order for Sweden to comply with the international legal framework, efforts and resources need to be distributed where they make a difference. In order to prevent fatal violence, it needs to be intersected at an early stage and resources need to be allocated to where the parties involved are most likely to be found.

4. Violence against women as torture

In this chapter we look closer at defining violence against women as torture. The prohibition of torture is found in the European Convention of Human Rights, ECHR, and of course also in the United Nations Convention against Torture, Inhuman or Degrading Treatment or Punishment, both of which Sweden has ratified. Here we will however only look at the provision on torture found in the ECHR.

4.1 Torture and article 3 of the ECHR

Article 3 of the European Convention on Human Rights prohibits torture, inhuman or degrading treatment and punishment. Looking at the Courts rulings, it is made clear that states have an obligation to ensure that those within their jurisdiction are not subjected to such treatment, neither by the state nor by other individuals.⁸⁰

In order for article 3 to be applicable, the ill-treatment must be of a certain level, this level is relative and depends on circumstances such as context, duration and physical and mental effects of the treatment. In some cases the sex, age and state of health of the victim is also taken into account.⁸¹

⁸⁰ White, R, Ovey, C, *The European Convention on Human Rights*, 5th ed, Oxford University Press, New York, 2010, p. 168. See for example; *H.L.R. vs. France*, Case No. 11/1996/630/813, 22 April 1997, Council of Europe: European Court of Human Rights, para. 40.

⁸¹ *Opuz vs. Turkey*, para. 158, *Costello-Roberts vs. the United Kingdom*, Application No. 247-C, 25 March 1993, the European Court of Human Rights, para. 30.

In the case of *Opuz vs. Turkey*, the state had violated the prohibition of inhuman or degrading treatment in article 3 as the perpetrators violence against his wife had been serious enough to fall under the provision of “ill treatment” (the woman and her mother had been repeatedly assaulted by the woman’s husband, the woman survived being stabbed but sustained life threatening injuries, her mother was shot dead by the husband) and Turkey had failed to protect the applicant from her husband due to the police having persuaded the women to drop their complaints which lead to the man repeatedly enjoying impunity from prosecution.⁸²

In 2010, Sweden was found to be in violation of article 3 by the ECtHR after an Afghani woman was not granted asylum in Sweden. The applicant claimed she was at risk of imprisonment or death if she was to be returned to Afghanistan since she had left her husband in her home country and gone to Sweden to live with another man. The court found that according to reports, approximately 80 percent of Afghani women were subjected to domestic violence. If the woman was deported, Sweden would therefore be in violation of the prohibition of inhuman and degrading treatment or punishment of article 3.⁸³

4.2 Conclusion – Gender based violence as torture

It is clear that the state is not only responsible to respect the prohibition on torture; states also have to protect its inhabitants from being exposed to such treatment. The case law also shows us that repeated gender based violence from a non state actor and even the risk of being exposed to gender based violence (in another country) can be enough to invoke state responsibility.

5. Violence against women as discrimination

As early as 1989 the United Nations put forward a report where violence against women (in the family) was connected to the patriarchal structures in

⁸² *Opuz vs. Turkey*, para. 160.

⁸³ *N. vs. Sweden*, Application No. 235005/09, 20 July 2010, Council of Europe: European Court of Human Rights, para. 55-62.

society where “the gender based nature of violence against women and its linkage to subordination, inequality between women and men, and discrimination, led to its categorization as a matter of human rights”.⁸⁴ In this chapter we will look closer at article 14 of the European Convention on Human Rights as well as the Convention on the Elimination of all Discrimination against Women, CEDAW. Neither of these documents explicitly recognises violence against women as prohibited conduct. They have however, as we will see, been interpreted extensively so that the discrimination provision also encompass gender based violence.

5.1 Legal framework for gender based violence as discrimination

Article 14 of the European Convention on Human Rights, ECHR, prohibits discrimination on several grounds, amongst them sex, race and colour. However, in order for it to be applicable, the case in question must also fall under one of the substantive articles such as the right to life (article 2) or the prohibition of torture (article 3). In short, article 14 is not applicable on its own.

In article 2 of the Convention on the Elimination of all Discrimination against Women, CEDAW, discrimination against women in all its forms is condemned. However, the unwillingness and concerns regarding granting women equal rights to men are made clear by the large number of reservations CEDAW has been subjected to. In fact, the Women's Convention has been subject to the most advanced reservations in comparison to other UN conventions.⁸⁵ This reluctance is also visible in the fact that violence against women is not addressed explicitly in the Convention. The monitoring Committee for the Women's Convention has however expressed that violence against women should be seen as embodied in the general prohibition of discrimination laid down in article 3.⁸⁶

⁸⁴ Report by the UN Division for the Advancement of Women, *Violence against Women in the Family*, 1989.

⁸⁵ Greenhill, Malin, Ulfsparre, Christina, *Männkliga rättigheter för alla och envar*, Nordstedts Juridik, Solna, 2007, p. 128.

⁸⁶ Greenhill et al, 2007, p. 129.

When read together with article 3, article 2 and the broad definition “discrimination of women” encompasses a demand on states parties to not only work to eliminate discrimination against women in those explicit fields set out in the convention, but to eradicate discrimination which hinders women’s enjoyment of all fundamental human rights and freedoms. This extended mandate of the convention is further accentuated in the Women’s Committee’s General Recommendation 28 where it is said that convention extends protection against discrimination to also encompass the enjoyment of rights which are not explicitly stated in the convention.⁸⁷ The extension of the discrimination provision is also found in General Recommendation number 19 where the Committee identifies a number of rights, not mentioned in the convention, which can be violated through women being subjected to violence in the family. In Recommendation number 19, the Committee also stresses that the state parties’ responsibility extends to and encompass the elimination of the inequalities caused by such gender-based violence.

In the case of *Opuz vs. Turkey* the European Court of Human Rights held that the violence against the two women had been gender based and also found that domestic violence primarily affects women. According to the court, the passivity of the Turkish state, both judicially and generally, created a climate which contributed to domestic violence.⁸⁸ Therefore the Court argued that the Turkish state had violated article 14, prohibition of discrimination, in conjunction with article 2 and 3. This was the first time the ECtHR found that a domestic violence case contained elements of discrimination.⁸⁹

On the basis of discrimination, the Women’s Committee recommended the state of Hungary to introduce legislation specifically concerning domestic violence and to ensure that women exposed to such violence had access to restraining orders and secure shelter. The Committee also stated that Hungary was obligated to bring perpetrators of gender based violence to justice in ac-

⁸⁷ CEDAW General Recommendation 28, para. 7.

⁸⁸ *Opuz vs. Turkey*, para. 184-202.

⁸⁹ Factsheet on Violence against Women, by the European Court of Human Rights, March 2013, downloaded from http://www.echr.coe.int/Documents/FS_Violence_Woman_ENG.pdf, accessed on 24 May 2013.

cordance with international standards.⁹⁰ The case concerned a woman who had suffered repeated and severe violence from her former partner. The man had also threatened to kill her and rape the couple's two children. When the woman moved, he continued to harass her and also broke in to her new home and beat her. The Hungarian court ruled against the woman's claims on restricted access for the man as regarded their apartment as this would violate the man's right to property. The lengthy process against the man, who was not detained during the legal process, resulted in fines. The Committee had found Hungary to be in violation of several of the provisions of CEDAW, including article 2 and the prohibition of discrimination, as Hungarian law did not provide restraining orders and the state could not provide shelter for the woman and her child who suffered from severe brain damages.⁹¹ The prevailing stereotypes in the Hungarian society where women were subordinate to men was said to contribute to violence against women which in turn lead to the state being in violation of the prohibition on discrimination in CEDAW.⁹²

5.2 Conclusion – Gender based violence as discrimination

Again, we see how the international legal framework is broadened from an obligation to ensure protection from gender based violence through national legislation, to state responsibility including taking proactive measures to prevent such violence. However, a major problem using the discrimination provision as a tool for working with gender based violence is that it does not explicitly prohibit violence against women. Once more women are protected only indirectly which should be said to lead to men and women being treated unequally under international law.⁹³ On the other hand we see the ECtHR and the Women's Committee working with the provisions on discrimination to clarify the due diligence standard of states. In the cases examined here, the state was found responsible for ensuring women's safety through restraining orders, women's shelters and for detaining suspected perpetrators when state authori-

⁹⁰ *Ms A.T. vs. Hungary*, the Committee on the Elimination of Discrimination against Women, Communication No. 2/2003, 26 January 2005, para. 9.6.

⁹¹ *Ibid*, paras. 2.1-2.4 and 9.2-9.4.

⁹² *Ibid*, para. 9.4.

⁹³ Edwards, 2011, p. 194.

ties knew, or should have known, the woman might suffer harm. These are however all actions taken after the woman has already suffered violence and although the Court and the Committee talked about positive obligations of the state, there was no mention of practical measures for working against the societal structural causes behind the violence.

6. Due Diligence - Taking International Obligation further

In general recommendation number 12 from 1989, the Committee on the Elimination of Discrimination of Women recommended states to review their law and policies on violence against women and include the progress of their work in combating this violence in their periodic reports to the Committee.⁹⁴ Three years later, general recommendation 19 suggested states were obligated to take positive measures to eliminate all forms of violence against women. The Committee thereby imposed due diligence on states.⁹⁵ An example of the due diligence responsibility is the ECtHR ruling where the withdrawal of complaints made concerning domestic violence did not absolve the state of its positive obligation to protect identifiable individuals, the wife of the alleged perpetrator and her mother. The women's previous reports and complains were deemed sufficient to establish that the police had knowledge about the risks of continued violence and therefore a duty to protect the women regardless of them withdrawing their complaints.⁹⁶ In this chapter, the due diligence of states is further investigated.

6.1 Article 2 - The Essence of CEDAW

Article 2 of the UN Convention on the Elimination of all Forms of Discrimination against Women has been described as the "very essence of the convention"

⁹⁴ General Recommendation No. 12, the Committee on the Elimination of Discrimination against Women.

⁹⁵ General Recommendation No. 19, para 4-5, the Committee on the Elimination of Discrimination against Women.

⁹⁶ *Opuz vs. Turkey*, para. 152.

and the Committee also points it out to be crucial to the full implementation of the convention.⁹⁷

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.”

In article 2 we find the focus to be mainly on national law, legal institutions and legislative measures. States are obligated to ensure that national law safeguards women’s rights in so that they are not discriminated against formally or in practice. Further states are urged to make positive guarantees of equality through legislation as well as eliminate all existing laws and customs that are

⁹⁷ Freeman, Martha A, Chinkin, Christine, Rudolf, Beate, *The UN Convention on the Elimination of all Forms of Discrimination against Women – A commentary*, Oxford University Press, New York, 2012, p 72.

discriminatory. The article, this “very essence of the convention”, is however not solely limited to legislative measures, States are also required to adopt policies and to take “all other appropriate measures” in order to eliminate discrimination.⁹⁸

In order to best examine the scope of article 2, we must break it down into smaller fragments and determine the meaning, implication and relevance of each element. Significant to the issue at hand are, “agree to pursue...without delay a policy of eliminating discrimination against women” and “by all appropriate means”.

The rather general obligation “agree to pursue a policy of eliminating discrimination against women” has been further investigated by the Women’s Committee in General Recommendation number 28. According to paragraph 24 of the Recommendation, States are required to carry out a comprehensive assessment of the position of women, formulate a gender equality policy and monitor its implementation.

The phrase “all necessary means” found in article 2, somewhat overlaps with article 24 which requires states to take “all necessary measures at the national level, to fully realise the rights of the convention. Not only does article 24 underline the practical and actual obligations states are faced with when ratifying a convention according to fundamental principles of international law. It also reaffirms the claim in article 2 and stresses the fact that the Convention and its contents is not only inspirational wording for states with a common goal. It is a legally binding document where States Parties are obligated to ensure that the rights set out in the Convention are implemented on a national level, not only formally through legislation but also through actual execution on a practical level.⁹⁹

⁹⁸ Freeman et al, 2012, p 72.

⁹⁹ Freeman et al, 2012, p 73.

6.2 Article 3 and 5 – Reconfirming the due diligence provision

The due diligence provision set out in article 2 is further reinforced through articles 3 and 5 of the convention. These provisions clearly indicate a due diligence responsibility for states to work proactively against gender based violence.

Article 3 of the CEDAW demands “*States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development of women, for the purpose of guaranteeing them the exercise of human rights and fundamental freedoms on a basis of equality with men.*”

Article 5 stipulates that, “*States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on the stereotyped roles for men and women.*”

6.3 Conclusion – Due Diligence and gender based violence

It is clear that states not only are responsible to ensure a legislative structure to prevent gender based violence is in place, they also need to work on social norms and underlying power structures in society. How states are meant to fulfil these obligations is however left unanswered. In the Women’s Committee’s General Recommendation number 28 the state obligations listed in CEDAW are said to be open to interpretation as regards their exact implementation.¹⁰⁰

7. A closer look at Sweden

Case law from the ECtHR and other international courts present us with some guidance as to what is expected from states in dealing with gender based vio-

¹⁰⁰ General Recommendation No. 28, the Committee on the Elimination of all Discrimination against Women, para. 23.

lence. As seen through the cases studied earlier the rulings are however of a more general form and mostly aimed at individuals serving the state, such as police officers. In order to look closer at some issues related to gender based violence in Sweden a more detailed analysis of the due diligence responsibilities can be found in the reports of the Special Rapporteur and the general recommendations made by the Women's Committee.

In its General Recommendation number 25, article 4, the Women's Committee stated that;

*[T]he overall object and purpose of the Convention... is to eliminate all forms of discrimination against women with a view to achieving women's de jure and de facto equality with men in the enjoyment of their human rights and fundamental freedoms. States parties to the Convention are under a legal obligation to **respect, protect, promote** and fulfil this right to nondiscrimination for women and to ensure the development and advancement of women in order to improve their position to one of de jure as well as de facto equality with men.*

Through this it is made clear that state responsibility is multifaceted and spans from the basic and fundamental commitment from the state not violating the Convention, to the state being obligated to also protect its inhabitants from violations by non-state actors as well as proactively working against such violations by promoting the rights found in the Convention.

In its concluding observations regarding Sweden's sixth and seventh periodic report,¹⁰¹ the Committee on the Elimination of Discrimination of Women commended Sweden for the 2007 adoption of the action plan to combat men's violence against women, violence and oppression in the name of honour and

¹⁰¹ According to article 18 of CEDAW, "States Parties undertake to submit to the Secretary General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect".

violence in same-sex relationships.¹⁰² In the paper, there were however a number of principal areas of concern and recommendations.

In this chapter, we will look into these recommendations as well as some of the recommendations made by the Special Rapporteur on Violence against Women who pointed out that deeply rooted patriarchal gender norms continue to fuel unequal power relations between men and women in Sweden. According to the Special Rapporteur, the survival of these norms leads to significant levels of violence against women where the ongoing rise of sexual violence was of special concern.¹⁰³ The four problems investigated are closely linked to the four areas of proactive work the former Special Rapporteur mentioned in her due diligence report from 2006 which was discussed in chapter 2.5, namely prevention, protection, punishment and reparations.¹⁰⁴ We will also keep in mind the state's commitment to respect, protect and promote its international obligations as mentioned above.

7.1 Restraining orders

The Swedish Act on Restraining Orders (*lagen om besöksförbud*) came in to force in 1998 with the main purpose of protecting women exposed to domestic violence from their abusive partners. In 2011 the law was replaced by a new law (*lagen om kontaktförbud*) which was meant to improve the situation for women who were continuously harassed despite having a restraining order against their partners, the new law allowed for GPS-monitoring of the perpetrator using electronic devices.¹⁰⁵ As of march 2013 this new system had not been utilised due to technical problems.¹⁰⁶

¹⁰² Concluding observations of the Committee on the Elimination of Discrimination against Women: Sweden, CEDAW/C/SWE/CO/7, para 9.

¹⁰³ Report of the UN Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk – Mission to Sweden, A/HRC/4/34/add.3, 6 February 2007, para. 68-69.

¹⁰⁴ Summary Paper on the State responsibility for eliminating violence against women, supra note 50.

¹⁰⁵ Information on the Act on Restraining Orders from the Swedish National Council on Crime Prevention website, <http://www.bra.se/bra/brott--statistik/hot-och-paverkan.html>, accessed on 27 April 2013.

¹⁰⁶ Information on the usage of electronic devices as part of enforcing restraining orders from *Tryggare Sverige* website, <http://tryggaesverige.org/forsta-aret-med-lagen-om-kontaktforbud-2>, accessed on 27 April 2013.

In 2012 there were 4 150 restraining orders issued in Sweden which meant an increase from 2011. Amnesty International points out that both the number of requested restraining orders and the number of requests granted, vary significantly between different regions. The number of granted restraining orders varies between 35 and 74 percent between different regions in Sweden.¹⁰⁷ This indicates that police authorities in one region might handle the obligation to inform its citizens about restraining orders differently from their colleagues in a different region. It also implies that the prosecutors' offices interpret the law differently in their decisions on whether or not to grant a request for a restraining order.

As the amount of restraining orders being issued rose, there were also 6 390 reported breaches of restraining orders which was an increase of 1 130 crimes to the previous year. According to the National Council on Crime Prevention, repeat breaches of restraining orders are common which in turn results in a large number of reported crimes.¹⁰⁸ The Swedish National Council on Crime Prevention, BRÅ, estimates at least one in three restraining orders is breached.¹⁰⁹

Two problems are highlighted here, firstly the law in place is not practically implemented and secondly, the right to protection by the state is dependent on geographical conditions. As we have seen throughout this thesis, state responsibility extends further than having legal framework in place. Not utilizing the law (or not utilizing it uniformly throughout the country) should fall under the discrimination and torture provisions as well as the right to life norm as stated in *Opuz vs. Turkey* since there is a possibility that gender based violence could be prevented had the law been accurately and consistently implemented. The

¹⁰⁷ Amnesty International, 2004, p. 37.

¹⁰⁸ Statistics from the Swedish National Council on Crime Prevention website, <http://www.bra.se/bra/brott--statistik/hot-och-paverkan.html>, accessed on 27 April 2013.

¹⁰⁹ Westlund, Olle, Qvarnström, Jennifer, report for the Swedish National Council on Crime Prevention, *Nya regler i lagen om besöksförbud - delrapport*, Edita Nordstedts, 2005, p. 6.

often repeated violations of restraining orders should be an indicator for Swedish authorities to work harder at protecting the women exposed to gender based violence. As seen throughout this thesis, state responsibility is invoked when authorities know, or should know, of the risk of violence. As regards Sweden, the fact that the problem with violations of restraining orders is well known and that the new GPS-system has not been used since the law changed could possibly mean that Sweden does not live up to its obligation to protect its inhabitants from discrimination, torture and violations of the right to life. It should also be questioned if Sweden fulfils its responsibility to take proactive measures of prevention of violence as identified by the Special Rapporteur.

7.2 Municipalities' responsibility for women's shelters

The Committee on the Elimination of Discrimination against Women voiced its concern over the fact that the access to women's shelters varied to such extent between municipalities and that municipalities in some cases were unable to offer help to women victims of violence.¹¹⁰ Yakin Ertürk, the Special Rapporteur pointed out that according to the Swedish Social Services Act (*Socialtjänstlagen*), "municipal social welfare services "should" (not "shall") strive to ensure that victims of crime are given help and support and specifically take in to account victims of gender based violence".¹¹¹ She continued to account for the situation in Sweden where only a minority of the Swedish municipalities offered sheltered homes for women exposed to violence and most municipalities that did offer shelter were dependent on the support of non-governmental shelters.¹¹²

In 2005 Amnesty International reported that over one third of the municipalities in Sweden gave no or very small, symbolic, funding to women's shelters in the community.¹¹³ In 2006, the Swedish government put aside 81.5 million

¹¹⁰ Concluding observations of the Committee on the Elimination of Discrimination against Women: Sweden, CEDAW/C/SWE/CO/7, para 28.

¹¹¹ Yakin Ertürk, Special Rapporteur, 2007, p. 18.

¹¹² Yakin Ertürk, Special Rapporteur, 2007, p. 18.

¹¹³ Amnesty International, *"Not a priority Issue" – A review of the Work of Swedish Municipalities to Combat Men's Violence against Women*, 2005, p. 14.

Swedish kronor to support women's shelters.¹¹⁴ However, the legislation, leaving it up to the municipalities to decide to what extent they should provide shelter, is left intact and in Sweden's action plan to eliminate men's violence against women and girls from 2007, the Government stated the need to increase support to women's shelters and crime victim support centres.¹¹⁵

Despite this, the Swedish media reports that the pressure on the existing women's shelters have increased and in 2012, shelters had to turn away six out of ten applicants who were in acute need of a place at a shelter due to lack of resources.¹¹⁶

It should be questioned whether Sweden can be said to live up to the demands of protecting its female residents when the law does not require municipalities to actively support women's shelters. As mentioned earlier states are allowed a great deal of flexibility regarding how they decide to implement the obligations under CEDAW. However, if the chosen method, namely leaving it up to municipalities to decide on women shelter funding, is not efficient the state should be obligated to look into other ways of ensuring protection for those exposed to gender based violence.

Possibly, the unavailability for a place at a women's shelter could be seen as a violation of the right to (a dignified) life as mentioned in the case *Villagrán-Morales et al vs. Guatemala*. A woman exposed to violence by an intimate partner, as well as her children, should be entitled to a dignified life which possibly could only be provided by ensuring a place at a shelter. Also, the lack of shelters put women exposed to gender based violence at risk by further exposing them to their perpetrator. As mentioned earlier, the risk of being exposed to gender based violence is enough to invoke state responsibility.¹¹⁷ Therefore

¹¹⁴ Amnesty International, 2005, p. 19.

¹¹⁵ Action plan to combat men's violence against women, honour related violence and oppression, and violence in same-sex relationships, 2008, p. 21.

¹¹⁶ Newspaper article, *Platsbrist drabbar hotade kvinnor*, Metro Stockholm, 17 April 2013, p. 2.

¹¹⁷ *N. vs. Sweden*.

Sweden could be said to violate both the prohibition of torture and the provision of the right to life.

Again, one can argue that the Swedish state does not do enough to ensure protection of its inhabitants exposed to gender based violence.

7.3 Legal action against the perpetrator

Apart from concerns regarding the high prevalence of violence against women and girls in Sweden, the Committee on the Elimination of Discrimination of Women also stated that the low prosecution and conviction rates relating to violent crimes in Sweden were disappointing. The Committee also issued critique regarding the crime statistics not being broken down by the sex of the victims.¹¹⁸ This concern is also found in Amnesty International's report where it is said to be impossible to assert how many charges of gender based violence actually lead to convictions as the statistics is not broken down by gender.¹¹⁹

In 2008, 5 446 rapes were reported to the Swedish police, only in 262 of those cases where the perpetrator or perpetrators convicted.¹²⁰ The same year the National Council for Crime Prevention released a report stating that the number of cases of violence against women leading to prosecution could be increased by improving the police's work methods. The study showed that in 25 percent of the examined cases, there had been an identified witness who had not been heard or interviewed and that 25 percent of the injuries the woman sustained had not been documented.¹²¹

In 2011 there were 6 530 reported cases of rape out of which 97 percent concerned rape against women.¹²² 168 of these cases went to prosecution, which

¹¹⁸ Concluding Observations of the Committee on the Elimination of Discrimination against Women: Sweden, CEDAW/C/SWE/CO/7, 8 April 2008. para. 28.

¹¹⁹ Amnesty International, 2004, p. 35.

¹²⁰ The Swedish Women's Lobby, *Beijing + 15: The platform for action, the parallel report from the Swedish Women's Lobby*, 8 February, 2010, p. 11.

¹²¹ The Swedish Women's Lobby, 2010, p. 11.

¹²² *Anmälda brott – Slutlig statistik för 2011*, report on reported crimes 2011 from the Swedish National Council on Crime Prevention (Brottsförebyggande rådet), p. 8.

was a decrease of 18 percent compared to 2010.¹²³ This meant the number of prosecutions for rape had decreased to almost the same level as before the change in legislation in 2005 when what used to be sexual exploitation fell under the provisions of rape. In the period 2002-2011, the number of prosecution decisions regarding rape as the main crime increased by 49 percent which was mainly believed to be due to the change in legislation. It should be noted that the number of prosecution decisions regarding rape is relatively low which means that even small variations can lead to large percentage differences between years.¹²⁴

From the statistics presented here we can conclude that the number of reported cases of rape that went to prosecution in 2011 were somewhere on 2,5 percent. When comparing this to a similar crime such as assault where 89 500 crimes were reported to the police¹²⁵ and 9 400 lead to prosecution¹²⁶, we see that the prosecution rate was much higher (10,5 percent).

A cautious conclusion could be that the significant divergence between crimes mainly aimed at men, such as assault,¹²⁷ and crimes mainly aimed at women, rape,¹²⁸ leading to prosecution would mean a violation of the prohibition on discrimination as set out in the ECHR and CEDAW. It is questionable if the Swedish state can really be said to fulfil its obligation to protect its inhabitants and punish its perpetrators when crimes committed against women are not brought to prosecution to the same extent as crimes against men. Also, the commitment to provide reparation as put forward by the Special Rapporteur could be questioned as many victims of violence cannot receive damages as their cases are not tried in court.

¹²³ *Personer lagförda för brott – slutlig statistik för 2011*, report on prosecuted crimes from the Swedish National Council on Crime Prevention (Brottsförebyggande rådet), p. 9.

¹²⁴ Ibid.

¹²⁵ Supra note 122, p. 5.

¹²⁶ Supra note 123, p. 9.

¹²⁷ The number of reported assaults against women represented 31 percent of the reported cases of assault (28 000 out of the 89 500), Supra note 122, p. 6.

¹²⁸ 97 percent of reported rape cases concerned rape against women, Ibid, p. 5.

7.4 Poor knowledge of women's rights

In recommendation 18 and 19, the Women's Committee expressed concern regarding the lack of knowledge of CEDAW and the optional protocol to the convention which grants women the right to turn to the UN for reparation and compensation.¹²⁹ The optional protocol has as of yet not been utilised in Sweden and is not well known amongst the public or the government offices, municipalities or the judicial system.¹³⁰

In the action plan from 2007, where enhancing the knowledge on gender based violence was one area which was specifically identified, the Swedish government said it was committed to five specific measures in order to enhance knowledge on such violence; (a) Funding for research on men's violence against women, violence and oppression in the name of honour and violence in same-sex relationships, (b) Inventory of violence and oppression in the name of honour, (c) Inventory of arranged marriages, (d) Assignment requiring the National Board for Youth Affairs to train employees working with out-of-school care, the social services and school education, (e) Investigations focusing on women who have died as a result of violence in a close relationship.¹³¹

The focus seems to be on further investigating issues already known rather than funding campaigns to inform the public (which include victims, perpetrators and other individuals such as relatives and friends) as well as professionals who might come in contact with those affected by gender based violence. Also, without sufficient knowledge within the judiciary system and the police force, the legislation in place risks being ineffective.¹³²

The Swedish Women's Lobby presents two critiques relevant here. Firstly, the 2009 merge of the previously multiple thematic ombudsmen into one, the equality ombudsman. According to the Women's Lobby, this merger has

¹²⁹ Concluding Observations of the Committee on the Elimination of Discrimination against Women: Sweden, CEDAW/C/SWE/CO/7, para. 18-19.

¹³⁰ The Swedish Women's Lobby report, 2012, p. 10.

¹³¹ Action plan to combat men's violence against women, honour related violence and oppression, and violence in same-sex relationships, 2008.p. 40-42.

¹³² Amnesty International, 2004, p. 49.

weakened the gender equality process.¹³³ Secondly, parallel with the merge of the ombudsmen, the different laws on discrimination were also merged to one law.¹³⁴ This meant a change for private companies that previously had to produce an annual equality plan.¹³⁵ With the new law in place, companies only had to make a gender equality plan every three years and small companies, with less than 25 employees were exempt all together.¹³⁶ This change meant that 99 percent of all private companies in Sweden were exempted from the requirement of making an equality plan. It should be noted that the largest divergence in salaries between men and women is found in the private sector.¹³⁷

The Women's Lobby believes that Sweden through these two changes has actively weakened the institutional framework for working towards gender equality and that the state is therefore in breach of the provisions of CEDAW.¹³⁸ In order to handle these problems the Women's Lobby suggested that more funds should be distributed to the women's movement to enable a campaign to increase the knowledge on CEDAW.¹³⁹

It is possibly farfetched to accuse Sweden of violating the ban on torture or the provision of the right to life when it comes to the question of increasing the knowledge on violence against women. However, the due diligence provision discussed in chapter 6 clearly states that states have a responsibility to take all appropriate measures to eliminate discrimination against women. With this in mind, and with regards to the recommendations made by the Women's Committee it should not be too farfetched to say that states have a responsibility to inform its inhabitants of their rights so they can claim them accordingly as well as act to prevent crime through educating both state personnel and inhabitants. Also, the fact that 99 percent of private companies in Sweden are now exempt from formulating an equality plan stands in stark contrast to the obligation

¹³³ The Swedish Women's Lobby report, 2012, p 4.

¹³⁴ Diskrimineringslag (2008:567).

¹³⁵ Jämställdhetslag (1991:433), para. 13.

¹³⁶ Diskrimineringslag, supra note 133, chapter 3 para. 13.

¹³⁷ The Swedish Women's Lobby report, 2012, p. 5.

¹³⁸ Ibid.

¹³⁹ Ibid, p. 6.

formulated by the Women's Committee in General Recommendation 28 where states were said to be responsible not only for having a gender equality policy in place, but also for monitoring its implementation. The latter being difficult for obvious reasons when 99 percent of the private sector is not obligated keep records of working on the issue the state is meant to monitor.

7.5 Conclusion on Sweden

In a global comparison, Swedish penal law and theoretical legal framework for dealing with the issue of violence against women is excellent. However, the low prosecution and conviction rates make it clear that an excellent legal framework is not sufficient when it is not carried through by the different government bodies and representatives.¹⁴⁰ According to the Swedish Government, eliminating violence against women has a continuously high priority.¹⁴¹ But at the same time, Sweden seems to lack political will to make changes where they are needed, as the examples regarding the situation with women's shelters and restraining orders have shown. When revisiting the four areas of preventive work identified in the Special Rapporteur's report on due diligence, prevention, protection, punishment and reparations, we find that there is still work to be done within all four of those areas.

8. Concluding thoughts

What are the relevant international instruments when looking at violence against women as a human rights violation and what state obligations can be identified through those instruments?

Out of the international legal instruments examined in this thesis, it is clear that the ECHR and CEDAW have been the most utilised practically. The UNHCR serves mostly as theoretical framework and of course, historically as a source

¹⁴⁰ Ertürk, Yasin, *Report of the Special Rapporteur on violence against women, its causes and consequences, Mission to Sweden*, A/HRC/4/34/Add.3, para. 70.

¹⁴¹ UN Universal Periodic Review (UPR): Sveriges nationella halvtidsrapport, A2012/2841/DISK, 2012, p. 27.

and inspiration for other human rights instruments. The ECtHR's rulings serve to further define the rights examined in this thesis and are legally binding. The recommendations made by the Women Committee and the Special Rapporteur on Violence against Women are not legally binding but provide more in depth analysis on state responsibility as regards gender based violence.

It is clear that, in order to fight violence against women, states need extensive and comprehensive legislation; adapt to deal especially with women's experiences of violence and oppression. In countries like Sweden, with such a legal system generally in place, it should not be considered too much to also require structural reforms to take that next step, from concrete legislation, which understandably is easier to measure, understand and analyse, to working with the soft values which are the underlying cause of gender based violence. A survey done by UNIFEM concluded that actors like the UN, the World Bank and states, mostly focus on regulations, surveys, guidelines and conventions whereas more costly and resource-consuming operative input is neglected.¹⁴²

The approach of focusing on hard values that are easy to measure is in my mind, to make a somewhat simplified analogy, much like a doctor trying to cure a patient by treating the symptoms and not the cause of a disease.

However, the government of Sweden seems to acknowledge gender power structures based on men's superiority and status as the societal norm and women's inferiority as the explanation and cause for gender based violence. For example, the former Minister for Gender Equality, Jens Orback spoke at the UN Women's Convention in Beijing in 1995 and stressed the importance of realising and acknowledging societies' existing gender power structures.¹⁴³

One issue concerning state obligation to battle gender based violence is the fact that the scope of the obligation is still unclear. The case law from the ECtHR is

¹⁴² Spindel, C, Levy, E and Connor, M, *With an End in Sight: Strategies from the UNIFEM Trust Fund to Eliminate Violence Against Women*, The United Nations Development Fund for Women, New York, 2000, p. 16.

¹⁴³ Johnsson-Latham, 2005, p. 21.

binding but focuses only on post violence measures such as restraining orders. The provisions in CEDAW tell tales of preventive work but are presented in general terms and when further defined in for example general recommendations, are not legally binding. Efforts are however made to untangle the somewhat unclear obligations of state parties. For example, the Special Rapporteur on Violence against Women has set out to identify “indicators” for state performances when dealing with violence against women.¹⁴⁴ These are meant to be used to both guide states in the right direction but also assess the progress made. The legal status of such indicators is still unclear. However, most seem to agree that there are now positive obligations on the state to protect women from domestic violence.¹⁴⁵

Does Sweden meet the requirements for active and proactive work against gender violence imposed by the international legal instruments to which Sweden is bound?

As regards the General Recommendation number 25 and the state responsibility to respect, protect and promote the Convention on the Elimination of Discrimination against Women, we can quite easily conclude that Sweden does in fact respect CEDAW as it does not exercise violence against women in its own entity. However, the Swedish state could be said to not fully comply with the demands on protecting and promoting the Convention. This is possibly also true as regards the demands on prevention, protection, punishment and reparation identified by the Special Rapporteur.

The Swedish Women’s Lobby recommends the government to introduce annual courses on men’s violence against women for all personnel working in the judiciary system.¹⁴⁶ In order to further enable studies of gender based violence and to thereby improve the efforts made by politicians when distributing funds, criminal statistics should be divided according to gender, age, crime type and

¹⁴⁴ Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Indicators on Violence against Women and State Response, UN. Doc. A/HRC/7/6/, 29 January 2008.

¹⁴⁵ See e.g. Reid, 2011, p. 373.

¹⁴⁶ The Swedish Women’s Lobby report, 2012, p. 22.

relationship between perpetrator and victim. This would also enable improved education for personnel working in places where they might come in contact with people affected by gender based violence.

As we have seen, the provisions of the law on restraining orders need clarification to ensure accurate and uniform implementation. These provisions provide a feeling of security for women in violent relationships and if the law is not accurately implemented, they might be subjected to danger.¹⁴⁷ Having a functioning system for restraining orders is of special importance as the risk of fatal violence is increased when a woman tries to leave the relationship.¹⁴⁸

Also, as discussed in chapter 3, Sweden needs to update the traditional way of thinking regarding decisions on where to invest funding for protective and proactive work. When men and women affected by gender based violence do not contact the police but rather health care facilities and social services; measures, education and funding need to be directed to where it makes a difference, namely in other parts of state controlled organs such as social services to further improve the work on preventing violence against women.

Although we can conclude that there is a responsibility of states to comply with the due diligence standard and work proactively to prevent violence against women, it is still unclear how far this responsibility extends. Violence is both a symptom of and a catalyst for the inequality between women and men. Apart from a number of vague and non-binding recommendations and short passages in cases from the European Court, there is not much to support a claim that states have a responsibility to prevent violence other than regarding post violent actions. However, in my own cautious speculation, the fact that the Swedish action plan to combat violence against women identifies measures such as increased prevention work, increased support and intervention aimed at perpetrators of violence, increased collaboration between state agencies and increased knowledge is something that could speak in favour of such responsibil-

¹⁴⁷ The Swedish Women's Lobby report, 2012, p. 22.

¹⁴⁸ Meyerfield, 2008, p. 62.

ity.¹⁴⁹ The fact that Swedish authorities have identified these “soft areas” could be seen as a sign that state responsibility, as regards Sweden, does extend further than legal framework focusing on post violence measures.

¹⁴⁹ Action plan to combat men's violence against women, honour related violence and oppression, and violence in same-sex relationships, 2008, p. 6.

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