

The Human Rights Committee is not atypical in the lack of importance it gives to gender as a component of the definition of human rights; this pattern appears regularly in the work of publicists, activists and other bodies concerned with the implementation of the major civil and political rights catalogues. For example, a collection of essays which is the major work on the ICCPR in English and which is authored exclusively by males ignores the relevance of gender in its elaboration of the normative content of the Covenant, except in cases where the subject of women is forced upon it by the specific language of the Covenant.<sup>191</sup>

Similarly, a recent major treatise on torture and international law runs to several hundred pages without any discussion of the way in which sexual violence against women is a major component of the practice of torture. Nor does it even address the question of the inadequacies of the international law definition of torture which, by restricting its scope to acts committed by or at the instigation of State officials, excludes from the purview of international law major areas in which women suffer similar treatment at the hands of non-State officials. United Nations Rapporteurs preparing studies of particular human rights, thematic reports on human rights violations or reports on individual countries where one would expect some discussion of well-known violations of the rights of women, often compile reports which make no reference to the fact that women suffer not only many of the same violations as men but different ones as well. And many traditional NGOs are simply not interested in exploring the gender dimensions of human rights violations, although there have been some encouraging developments in recent years.

*Nature of the Inclusion*

Yet the more extravagant critiques of the 'mainstream', that women are completely ignored, go too far. Firstly, despite the apparently pervasive disregard of gender, a number of gender-specific issues are addressed within the mainstream. Secondly, it is clear that attention is given to women who are victims of classical human rights violations (where the victims 'just happen to be women'). For example, issues of discrimination on the basis of sex, torture or arbitrary imprisonment of women, and practices of particular importance for women (such as trafficking in women, forced prostitution and female genital mutilation) have a place on the agenda of 'mainstream' bodies. There have been some indications in recent years that some of the human rights bodies are becoming more aware of the issue of gender and are attempting to respond to it, though how wide-ranging these responses will be remains to be seen. For example, the Committee on Economic, Social and Cultural Rights in its General Comment No 4 (1991) on the right to adequate housing contained in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights noted:<sup>192</sup>

6. The right to adequate housing applies to everyone. While the reference to 'himself and his family' reflects assumptions as to gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups. Thus, the concept of 'family' must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age,

---

191 See L Henkin (ed), *The International Bill of Rights: The Covenant on Civil and Political Rights* (Columbia University Press, 1981).

192 UN Doc E/C.12/1991/4, Annex III, para 6.

economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with Article 2(2) of the Covenant, not be subject to any form of discrimination.

Apart from this passage, the Committee does not develop its analysis of right to housing with explicit reference to gender dimensions of the right. Nonetheless, it does incorporate within its discussion issues which may be of particular importance to women rather than men in a number of societies (for example, the availability of potable water, energy for cooking, sanitation and washing facilities and food storage).

Despite this sort of example, one may perhaps be justifiably sceptical about the significance accorded to these issues within the 'mainstream' and the effectiveness of the monitoring and enforcement procedures or the manner in which those issues are handled. One might also ask about the cases of 'classical' violations against women which are not being noticed because of the use of flawed methods which do not explicitly take gender into account.

However, the question then becomes not whether violations of women's human rights are dealt with but the terms of the inclusion (and the exclusion). How much is included and what is left out? What are the terms and extent of the inclusion (are only those violations that conform to an androcentric model taken cognisance of)? Are the issues that are dealt with important issues, or relatively minor issues, thus distracting attention from more fundamental issues? How are these matters disposed of – are effective responses devised (and are they in accordance with the women whose interests are affected)? What level of resources and institutional support is given to this work? Is there a real commitment (as evidenced by effective procedures and enforcement mechanisms) to addressing these problems?

To date many of these questions have only been examined briefly – much of the discussion has been fairly descriptive – and provide fertile ground for further research. They are important questions to address because, whenever one raises the question of what the 'mainstream' is doing to address violations of the human rights of women, in particular gender-specific violations, one is referred to the work of bodies which have these issues on their agenda. The task then becomes one of evaluating the extent to which issues of real importance to women are covered and the effectiveness of the substantive work and the monitoring procedures which are in place – and then upon close examination these may turn out to be less impressive than portrayed.

For example, 'mainstreamers' frequently point to the body of international case law which has dealt with issues of particular importance for women (including sex discrimination and reproductive rights issues) and cases in which women have been successful in vindicating their rights as evidence of the contribution being made by the mainstream to the promotion of women's human rights.

While these cases are significant, it is also important to be aware of their conceptual limitations. Furthermore, it is instructive to see exactly what claims of women have been addressed and to ask why others have not been raised in these fora.

The international cases in which women figure as authors of complaints (or in which issues of sex discrimination otherwise arise) fall into a number of broad categories:

1. Those in which women suffer violations which are basically identical to those suffered by men.

2. Those involving claims of non-discrimination in which women are claiming an entitlement to the same treatment, rights or privileges as men.
3. Those involving claims by women of an entitlement to have control over their reproductive capacity or claims by others to attempt to limit that control.

The first category of cases in practice involves no particular recognition that sex or gender can be an important factor in the definition, cause, or form of violations of bodily or psychic integrity. The second and third categories do involve some recognition that sex and gender can play a role in the definition of what constitutes a human rights violation, particularly in cases which do not turn on a simple discrimination point because there is no male comparator.

Both the first and second categories embody essentially androcentric models of women's entitlements: if men are entitled to a particular benefit and women claim an identical benefit or if they put forward a claim sufficiently analogous to those of men, then the mainstream may take cognisance of it.<sup>193</sup>

The third category has been far more problematic from women's point of view with rather mixed outcomes if one is concerned to have an international endorsement of women's control over their own reproductive capacity.

Nearly all the leading international cases involving issues of sex discrimination in which a claim has been successful have been relatively 'easy' ones in analytical terms. While the outcome of a number of cases may have had important political and economic consequences and required the rejection of traditional or stereotyped ideas, giving to women the identical privileges (in most cases at a formal legal level) as are enjoyed by men does not involve a major theoretical reorientation. While important in what they do achieve, one should not overestimate their significance – they do not undertake the rethinking that is necessary if one approaches the area with a feminist perspective of even moderately radical ilk.

In summary, while there is still much detailed work to be done to determine the extent to which human rights violations against women and violations of women's rights are dealt with by the 'mainstream', one gains a firm initial impression that by and large there is relatively little acknowledgment that gender is an important dimension in defining the substantive content of rights, in particular those rights that do not refer specifically to women or that embody a guarantee of non-discrimination, and that equal enjoyment of rights is defined in terms of a male-centred model. The corollary of this is that there is also little recognition that a State's obligation to ensure equal enjoyment of a right by women may entail the taking of measures quite different from those which may be necessary to ensure that men enjoy that right.

*Reasons for the Limited Recognition of the Role of Gender in Defining and Responding to Human Rights Violations*

Thus, while there remains much work to be done in further documentation of the extent to which human rights violations against women are dealt with in the 'mainstream', there are certainly strong indications that the relevance of gender to the definition of human rights violations and responses to them is much neglected within that 'mainstream', rendering invisible many violations of women's human dignity.

---

193 Cf CA MacKinnon, *Toward a Feminist Theory of the State* (1989), pp 215–34.

Why is this so? A number of reasons for this neglect have been suggested.<sup>194</sup> They include overwhelmingly the membership of the bodies charged with the implementation and interpretation of these instruments, the apparent reluctance historically of human rights groups and women's human rights groups to insist that these issues be addressed in the mainstream, the institutional separation between the bodies concerned with 'human rights' and those concerned with 'women's issues', and the conceptual framework of traditional civil and political rights analysis.

Despite the rhetoric about the inter-dependence and indivisibility of human rights, traditional civil and political rights have received the lion's share of the attention of the international human rights community. Many of the violations suffered by women are bound up with the disadvantages they suffer in the economic and social field, and the lack of attention devoted to these economic, social and cultural rights has accordingly involved a neglect of areas important for the facilitation of the advancement of women. Furthermore, violations of 'women's human rights' are often regarded neither as pressing nor as important as the other violations of human rights being perpetrated in many parts of the world or as too sensitive to deal with in light of possible accusations of cultural imperialism.

There is a certain reluctance within the civil and political rights world to address social and economic inequalities of a structural nature which effectively negate the possibility of the exercise of guaranteed civil and political rights. Much of current human rights practice has concerned itself, quite understandably, with symptoms rather than the underlying causes of human rights violations. To respond to clear cases of gross violations of human rights where victims are suffering in a direct and visible way and where one can point to the perpetrator of the violation and demand that the perpetrator desist from its conduct is in some ways easier than attempting to respond to violations of human rights arising from social and economic arrangements which can only be addressed by fundamental changes in those relations (such as starvation of a large proportion of a country's population unnecessarily). However, even those institutions which have attempted to focus on the conditions giving rise to gross violations of human rights do not see gender or violations against women as an identifiable area requiring urgent study. Nor do some clear cases of gross violations against women attract the same attention as some which are seen not to raise 'sensitive' issues of culture and tradition which so often spell 'hands off' in relation to violations of women's rights. Two prominent examples are the practice of female circumcision or female genital mutilations and the position of women in various religions (in particular under some interpretations of Islam).<sup>195</sup>

One other reason why mainstream bodies may not be paying adequate attention to gender-related issues may be the nature of their information-gathering techniques. Many of the United Nations human rights bodies, for example, obtain a great deal of their independent information about human rights violations from the many non-governmental organisations which form part of

---

194 See eg F Gaer, 'Human Rights at the United Nations: Women's Rights are Human Rights', in *Brief No 24*, November 1989 (International League for Human Rights).

195 See D Sullivan, 'Advancing Freedom of Religion or Belief through the UN Declaration on the Elimination of Religious Intolerance and Discrimination' (1988) 82 *AJIL* 487; D Arzt, 'The Application of International Human Rights Law in Islamic States' (1990) 12 *Hum Rts Q* 202; A Rahman, 'A Religious Rights Versus Women's Rights in India' (1990) 28 *Columbia J Trans L* 473.

the Geneva or US-based human rights community. While there are certainly women's organisations which are part of that community, many of them have traditional human rights concerns or agendas or are not particularly interested in pursuing women's issues in 'mainstream' human rights terms. The many networks of women's organisations which are working in the area of gender-specific violations know little about or have limited access to these international fora and do not appear to be sought out by those responsible for gathering information. A further factor is the location in Vienna of the UN bodies with primary responsibility for 'women's issues', the Commission on the Status of Women and the Committee on the Elimination of Discrimination Against Women, while the other human rights bodies are based in Geneva. This means that the Geneva-based NGOs are often not aware of what is happening in Vienna.

Another feature of the 'mainstream's' treatment of gender issues has been the rather limited notion of the concept of equality and non-discrimination in the enjoyment of rights. To date, the main model used has been a largely androcentric one – if men are entitled to something, then women should be entitled to the same thing; whereas true equality may involve the reworking of the core concept of the right to ensure that women enjoy that right fully.

But perhaps the most important reason has been the conceptual framework of the 'mainstream' with its public/private split, which has obscured many of the violations of human dignity suffered by women at the hands of private individuals. In the next section some of the ramifications of this public/private distinction are explored and in the following one the conceptual structure of the 'mainstream' civil and political rights framework is examined in the context of violence against women.

*The Public/Private Distinction: State Responsibility Arising out of the Acts of Private Individuals*

The theoretical framework of traditional human rights analysis has been a major contributor to the neglect of violations of particular concern to women; it also poses a number of serious obstacles which need to be overcome if women's legitimate claims in relation to the right to life and the right to bodily integrity are to be addressed within that framework. These problems arise from a focus on direct State violations of individual rights, an acceptance of a division between public and private spheres of social life, and a reluctance to address the existence of economic and social conditions which affect the ability to exercise the basic civil and political rights guaranteed.

The primary orientation of civil and political rights analysis has been direct violations of the rights of individuals by the State. These violations have generally taken one of two forms: the adoption of legislation or practices which discriminate against particular groups or unjustifiably limit the exercise of rights, or the actions of State officials directed against individuals which violate their rights – classic cases being torture, wrongful imprisonment and summary or arbitrary executions.

Women do, of course, suffer serious violations of their rights directly at the hands of the State and, as indicated above, sex and gender may play a role in the instigation of such violations and the particular form they take. However, women also suffer major violations of their physical integrity at the hands of private individuals. The extent of State involvement and complicity in these violations is its responsibility for the maintenance of a legal and social system in which these violations occur and may legitimate such violations or allow them to

pass unpunished. However, the liability of the State for such 'complicity' under international human rights law is far from self-evident.

Further, the conceptual framework of civil and political rights is built on a separation of public and private realms. The cordoning off of particular activities from direct State intervention by adopting the notion of a sphere of private life (the very area in which women suffer many infractions of their rights at the hands of men) renders the vindication of these rights difficult within that framework.

*State Responsibility Arising out of the Acts of Private Individuals*

Despite the achievements of the international human rights movement in bringing about a situation in which it can be said that States owe duties to their own citizens, our present system of international law is still fundamentally a State-centred one of reciprocal rights and obligations enjoyed and borne by States among themselves. International law has had difficulty in dealing with the question of the liability of States in relation to the acts of private individuals which cause damage to other individuals and States. It is still a relatively undeveloped subject in the area of international human rights.

The major exploration of the issue in general international law has been in relation to the liability of governments for harm caused by individuals within their territory to nationals of another country or to their property. Diplomats and other foreigners within the jurisdiction of a State who suffer physical or material damage at the hands of private individuals have been the two basic categories with which international law traditionally concerned itself. In such cases, depending on the circumstances and the status of the individual who suffers damage, the position has been that a failure to take reasonable steps to prevent harm to aliens or, at the very least, the failure to provide a legal system within which claims for redress can be pursued by private individuals or are pursued by public authorities can amount to a violation of international law by the authorities of the host State. This is so even though the State was not directly responsible for the original actions of the private individuals who caused the damage.

Thus, even where private individuals have violated others' rights in the first instance, the host State has been held liable for a failure to take reasonable steps to prevent these violations or for the failure to have an appropriate system of laws and institutions to punish or remedy such transgressions. Under some circumstances, then, international law requires a State not to just stand idly by while private individuals infringe the rights of other individuals; they must take positive steps to stop those violations or to offer redress for them.

*The Obligation of the State to Prevent or Provide a Remedy for Infringements of Rights by Private Individuals*

While the traditional liberal conception of human rights guarantees was protection against the direct exercise of State power against a private individual, it has become increasingly accepted at the international level that the interests protected by human rights guarantees may in many cases be encroached on by private individuals as well as government, and that this has implications for the responsibility of the State under international law.

As a result, there has been an expansion of the traditional content of States' obligations in the area of protection of human rights, with parallels being drawn from the more traditional doctrines of the law of State responsibility. Under the general human rights treaties (as well as other treaties), the State is considered to be under an obligation not only to refrain from taking direct action which

infringes individual rights but also to take positive steps to ensure that individuals actually enjoy those rights. This latter aspect of the obligation includes in certain circumstances a duty to take appropriate measures to protect individuals against violation of those rights by private persons. This approach has been adopted under the ICCPR, the European Convention and the American Convention on Human Rights.

The textual basis for these positive obligations has been the obligations assumed by the State under the treaties to take appropriate measures to ensure that individuals actually enjoy the rights guaranteed to them. For example, the obligations of the State under the ICCPR extend to ensuring in some circumstances that the rights of individuals are not infringed by other private persons or that adequate remedies are provided or appropriate punishment imposed if such rights are infringed.

As one commentator puts it:<sup>196</sup>

The obligation 'to ensure' these rights encompasses the duty 'to respect' them, but is substantially broader ... the provision implies an affirmative obligation by the State to take whatever measures are necessary to enable individuals to enjoy or exercise the rights guaranteed in the Covenant, including the removal of governmental and possibly also some private obstacles to the enjoyment of those rights ... as regards some rights in some circumstances, it may perhaps require the State to adopt laws and other measures against private interference with enjoyment of rights, for example against interference with the exercise of the right to vote and other political rights.

This approach to the general obligation to respect and ensure the enumerated rights against infringement by private persons has also been taken by the Inter-American Court of Human Rights when interpreting the similar language of the American Convention on Human Rights.

In *Velasquez Rodriguez v Honduras*,<sup>197</sup> a case involving 'disappearances' in Honduras, the court accepted that the Honduran government could be liable internationally if it failed to take appropriate steps to prevent or punish private individuals who caused others to 'disappear'. The court discussed the extent of the obligation in Article I of the American Convention 'to respect' and 'to ensure' the full and free exercise of the rights guaranteed in the Convention. It concluded that, while the obligation clearly extended to violations of rights carried out by the act of a public authority or by persons who use their position of authority:<sup>198</sup>

172 ... [This] does not define all the circumstances in which a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention ...

---

196 T Buerghental, 'To Respect and to Ensure: State Obligations and Permissible Derogations', in L Henkin, *op cit*.

197 Inter-American Court of Human Rights, Ser C No 4, Judgment of 29 July 1988 (1989) 28 ILM 291.

198 *Ibid*, paras 172, 174–5; 28 ILM 291, 325.

174. The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

175. This duty to prevent includes all those means of a legal, political, administrative and cultural nature that promote the protection of human rights and ensure that any violations are considered and treated as illegal acts, which, as such, may lead to the punishment of those responsible and the obligation to indemnify the victims for damages.

The general obligation 'to respect' and 'to ensure', the obligation to prevent, remedy or punish violations by private individuals has been examined in the context of a number of specific rights under the general human rights treaties.

For example, at the time the ICCPR was drafted, it was contemplated that the State had the obligation not merely to refrain from taking life under circumstances not consistent with the Covenant, but that the obligation to ensure enjoyment of that right included a duty to protect life against the actions of private persons. The Human Rights Committee has expressed a similar view. The European Commission of Human Rights has also recognised that the guarantee of the right to life under the European Convention requires the State in certain circumstances to take positive measures to protect the right to life against violations by private individuals.<sup>199</sup>

Both the European Court of Human Rights and the European Commission of Human Rights have recognised in a number of cases that effective guarantees of the enjoyment of individual rights require that the State protect individuals against the actions of other individuals infringing on those rights. One example is a case brought against the United Kingdom in which the court held that the right of freedom of association includes the right not to be a member of a trade union. The court also held that the failure of United Kingdom legislation to prevent an employer from discriminating against an employee on the ground of a refusal to join a union was a failure on the part of the United Kingdom to fulfil the obligation it had assumed under the Convention to 'secure to everyone within its jurisdiction ... the rights and freedoms' defined in the Convention.<sup>200</sup>

The general position under that Convention has been expressed by the Commission in the following terms:<sup>201</sup>

It is true that the Convention fundamentally guarantees traditional freedoms in relation to the State as the holder of public power. This does not, however, imply that the State may not be obliged to protect individuals through appropriate measures taken against some forms of interference by other individuals, groups or organisations. While they themselves, under the Convention, may not be held responsible for any such acts which are in breach of the Convention, the State may, under certain circumstances, be responsible for them.

---

199 *W v UK*, Application No 9360/81, European Commission of Human Rights, decision on admissibility of 28 February 1983, 32 D & R 211, 213; *X v Ireland* Application No 6040/73, 44 CE 121, 122.

202 *Young, James and Webster v UK*, judgment of 26 June 1981, Ser A, No 44, para 49, 62 ILR 359, 4 EHRR 38.

201 *National Union of Belgian Police* case, Report of the Commission, Ser B, No 17, para 59 (1976).



In *Plattform Ärzte für das Leben v Austria*, a case involving the disruption of anti-abortion demonstrations in Austria by those who supported the wider availability of abortion, the court also recognised that the State may be under a duty to take steps to ensure that the rights of freedom of assembly of some groups can be exercised without excessive interference from opposition groups.<sup>202</sup> The Human Rights Committee has also recognised that the classical civil and political rights impose some positive obligations on states to prevent infringements by private individuals, as has the Inter-American Court of Human Rights in the context of freedom of expression.

Thus, the State is required in certain circumstances to take positive action to ensure the enjoyment of those rights against interference by other private individuals. This action will generally include the enactment of laws and the fashioning of administrative and other arrangements so that individuals can actually enjoy the rights guaranteed by the relevant treaties. The various human rights bodies have recognised that positive obligations are implied in many of the classical civil and political rights and have begun to explore the extent of those rights. What is surprising is that the issue has barely been formulated in terms which raised issues of particular concern to women, either by complaints lodged by individuals or by the interpretative bodies themselves on their own initiative.

#### *'Private' Violence*

The widespread problem of violence against women which is not directly attributable to the State is more problematic for the human rights 'mainstream'. A recent United Nations study on violence against women in the family context described its dimensions:

Research indicates that violence against women is not confined to violence perpetrated by strangers. Indeed, it has become clear that women are more often at risk from those with whom they live and many of them live constantly with the threat of 'domestic violence', whether battery, rape, incest or emotional abuse.

In all countries and cultures, women have frequently been battered, sexually abused and psychologically injured by persons with whom they should enjoy the closest trust. This maltreatment has gone largely unpunished, unremarked and has even been tacitly, if not explicitly, condoned.<sup>203</sup>

The issue of violence against women has been at the forefront of the critique of the 'mainstream's' failure to recognise violations of women's human dignity. The assertion frequently made by feminists (admittedly in some cases as an attempt to change perceptions rather than as a statement of the existing legal position) that 'rape is a human rights violation' is met with the response from traditional human rights groups and the 'mainstream' that this is only the case if it is carried out by officials of the State (for example, the rape of women prisoners by prison guards).

This example highlights the conceptual difficulties that the established framework of international human rights law has in recognising that pervasive patterns of private violence against women may involve a failure by the State to respect the human rights of women.

---

202 Judgment of 21 June 1988, Ser A, No 139, para 32, 13 EHRR 204.

203 United Nations: *Violence Against Women in the Family*.

Yet the gulf between the two positions is by no means completely unbridgeable. While international law is traditionally reluctant to recognise the acts of private individuals as acts of the State, the discussion above has made clear that States are under an obligation in certain circumstances to take preventive or punitive measures against violations of the rights of individuals by private parties.<sup>204</sup>

To date, little has been done to explore the implications for violence against women of the recent developments in the area of State responsibility arising out of the acts of private individuals, despite the fact that considerable attention has been paid to that latter issue in other contexts. It is an important area well deserving of further work.

The Committee on the Elimination of Discrimination Against Women recently addressed the issue of violence against women in a general recommendation adopted at its 1992 Session. In its General Recommendation No 19 the primary aim of the Committee was to clarify the extent to which different forms of violence against women were in its view covered by the Women's Convention (in which the term 'violence' does not appear). Another, related goal of the General Recommendation was to emphasise the overlap between the obligations which States Parties to the Women's Convention had assumed in relation to violence against women and the obligations which States Parties to other human rights treaties had assumed in relation to such violence.

In its discussion the Committee characterised violence against women as a form of 'discrimination against women' as defined in Article 1 of the Convention and noted that the Convention obliged States Parties to eliminate all forms of discrimination, whether perpetrated by public officials or private individuals:

7. This definition of discrimination [in Article 1 of the Convention] includes gender-based violence – that is violence which is directed against a woman because she is a woman or which affects women disproportionately. It includes acts which inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

*Gender-Based Violence Violates Human Rights*

8. Gender-based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under specific human rights conventions is discrimination within the meaning of Article 1 of the Convention. These rights and freedoms include, *inter alia*:

- the right to life,
- the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment,
- the right to the equal protection of humanitarian norms in time of international or internal armed conflict,
- the right to liberty and security of person,
- the right to the equal protection of the law,
- the right to equality in the family,

---

<sup>204</sup> See eg the change in attitude adopted in the US State Department's 1990 Country Reports on Human Rights which reflects the stance that government tolerance of systematic violence and abuse directed at women engages the responsibility of the State.

- the right to the highest standard attainable of physical and mental health, and
- the right to just and favourable conditions of work.

*The Convention covers public and private acts*

9. The Convention applies to violence perpetrated by public authorities. Such acts of violence may also breach that State's obligations under general international human rights law, and under other Conventions, in addition to being a breach of this Convention.

10. It should be emphasised, however, that discrimination under the Convention is not restricted to actions by or on behalf of governments (see Articles 2.e, 2.f and 5). For example, under Article 2.e the Convention calls on States to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights, or to investigate and punish acts of violence, and to provide compensation.

11. States Parties should take appropriate and effective measures to overcome all forms of gender based violence, whether by public or private act.

*Absence of Complaints in International Fora*

There appear to have been virtually no cases at the international level in which violence against women has been explicitly raised by complainants. The closest instance seems to be *X and Y v Netherlands*,<sup>205</sup> a case under the European Convention in which a challenge was made to Netherlands law under which for various technical reasons a criminal prosecution could not be brought against a person who had sexually abused a mentally handicapped woman.

In that case, the European Court and Commission held that the failure of Netherlands law to provide for the possibility of criminal proceedings for this type of sexual violation while providing such remedies for others was a failure to fulfil its obligation to ensure that persons in the victim's position could enjoy the right to respect for their private life guaranteed by the Convention. In so holding, the court stated its view that, while the object of the guarantee of the right to privacy was 'essentially that of protecting the individual against arbitrary interference by public authorities', it did not stop there; it may impose positive obligations on the State which 'may involve the adoption of measures designed to ensure respect for private life even in the sphere of the relations of individuals between themselves'.

In view of this approach to positive obligations, one must ask why it is that there have there been no international cases in which women have alleged violations against States whose legal systems fail to make marital rape a crime or which provide inadequate administrative and legal preventive and remedial measures for rape and acts of violence committed against women. A number of possible explanations suggest themselves. One is that many of the groups active in combatting violence against women may know little about the international procedures that are available to them. A second reason may be that these international procedures are largely ineffectual in terms of producing practical results which benefit those whose rights are being violated or, at least, that there

---

205 European Court of Human Rights, Judgment of 26 March 1985, Ser A, No 91, 8 EHRR 235, 81 ILR 103.