

DUTY TO INVESTIGATE THE ARBITRARY DEPRIVATION OF LIFE BY NON-STATE  
ACTORS

By Cynthia Ibale

LL.M. LONG THESIS  
COURSE: Human Rights  
PROFESSOR: Eszter Polgári, Oswaldo Ruiz-Chiriboga  
Central European University  
1501 Budapest, Nador utca 9  
Hungary

© Central European University November 29, 2019

## Abstract

This thesis is dedicated to examining whether a gender approach to investigations is required when States are exercising their due diligence obligation to investigate gender-motivated killings by non-State actors. To tackle this question, an analysis of jurisprudence and standards developed by the international and regional human rights systems is provided. The discussion is then followed by an examination into the investigations of gender-motivated killings in Mexico, South Africa and Uganda based on established due diligence standards.

## Acknowledgement

I would like to thank the Legal Studies Department for the generous opportunity to study at such a leading institution. It has been an enriching experience that I will remain eternally grateful for.

I would like to also thank my supervisors, Professors Eszter Polgari and Oswaldo Ruiz-Chiriboga for their guidance especially during the conception of this research.

To my support team and accountability partners, I cannot thank you enough!

## Table of contents

<b>ABSTRACT.....</b>	<b>I</b>
<b>ACKNOWLEDGEMENT.....</b>	<b>II</b>
<b>TABLE OF CONTENTS .....</b>	<b>III</b>
<b>INTRODUCTION.....</b>	<b>1</b>
1.1 BACKGROUND.....	1
1.2 PROBLEM STATEMENT .....	5
1.3 RESEARCH OBJECTIVE .....	8
1.4 HYPOTHESIS.....	8
1.5 FRAMING WOMEN KILLINGS AS FEMICIDE .....	9
1.6 METHODOLOGY .....	11
1.7 LIMITATIONS.....	11
1.8 JUSTIFICATION OF CASE STUDY AND COMPARATORS.....	12
<b>2 DUE DILIGENCE STANDARDS.....</b>	<b>14</b>
2.1 POSITIVE OBLIGATION TO PROTECT THE RIGHT TO LIFE .....	14
2.2 STATE RESPONSIBILITY UNDER INTERNATIONAL LAW.....	16
2.3 STATE RESPONSIBILITY IN RELATION TO GENDER-RELATED KILLINGS .....	26
2.4 CONCLUSION.....	34

<b>3</b>	<b>THE NATURE OF INVESTIGATIONS IN MEXICO, SOUTH AFRICA AND</b>	
	<b>UGANDA .....</b>	<b>36</b>
3.1	MEXICO .....	36
3.2	SOUTH AFRICA .....	42
3.3	UGANDA .....	50
3.4	CONCLUSION.....	54
<b>4</b>	<b>CONCLUSION .....</b>	<b>56</b>
<b>5</b>	<b>BIBLIOGRAPHY .....</b>	<b>59</b>

## Introduction

### *1.1 Background*

#### i. Responsibility to protect life

The responsibility to protect life requires that States not only refrain from engaging in conduct that might result in the arbitrary deprivation of life but goes further to include the responsibility to ensure the right to life and exercise [of] due diligence to protect the lives of individuals against deprivations caused by persons. States are also required to organise “state organs and governance structures through which public authority is exercised in a manner consistent with the need to respect and ensure the right to life, including ... investigating and prosecuting potential cases of unlawful deprivation of life.”<sup>1</sup>

Positive obligations under the duty to protect life derives from the general obligation to ensure full enjoyment of rights as is articulated in Article 2(1) of the International Covenant on Civil and Political Rights, Article 1 of the American Convention on Human Rights and the African Charter on Human and Peoples’ Rights. The UN Human Rights Committee observes that this duty will be discharged if individuals are protected by the State from acts committed by State and non-state actors. Failure of States to ensure the enjoyment of rights guaranteed in a relevant

---

<sup>1</sup> UN Human Rights Committee, “General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life” (UN Human Rights Committee, October 30, 2018), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/36&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/36&Lang=en).

human rights treaty as a result of a failure to diligently investigate acts by private persons would amount to a human rights violation.<sup>2</sup>

Regional human rights mechanisms have established international responsibility of State arising from a failure to ensure the enjoyment of right to the life through diligent investigations of illegal acts of private persons. In *Velasquez Rodriguez v Honduras*, the Inter-American Court on Human Rights (Inter-American Court) found that “an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State,...because of the lack of due diligence to...respond as required...”<sup>3</sup> In its jurisprudence, the African Commission has concurred with this finding.<sup>4</sup>

ii. Due diligence obligation to investigate gender-motivated killings

Gender-motivated killings (femicide), as an extreme manifestation of violence against women, has raised concern at the global level. According to a 2019 global study on gender-related killing

---

<sup>2</sup> United Nations High Commissioner for Refugees, ‘Refworld | General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’ (*Refworld*) <<https://www.refworld.org/docid/478b26ae2.html>> accessed 15 January 2020, para. 8.

<sup>3</sup> Inter-American Court of Human Rights, Case of Velásquez-Rodríguez v. Honduras (Merits) (Inter-American Court of Human Rights July 29, 1988).

<sup>4</sup> African Commission on Human and Peoples’ Rights, Communication No. 323/06 Egyptian Initiative for Personal Rights & INTERIGHTS v Egypt (African Commission on Human and Peoples’ Rights December 16, 2011).

of women and girls, a total of 87,000 women were intentionally killed in 2017.<sup>5</sup> The African region and the Americas were among the regions with the highest rate of females killed purely by intimate partners in 2017.<sup>6</sup> The study states that women in Africa run a greater risk of being killed by an intimate partner compared to other regions.<sup>7</sup> 2017/2018 data from the South African Police Service indicates that a woman is murdered every 3 hours.<sup>8</sup>

Despite the increasing attention given to killings of women, it appears that little has been done to change the situation on the ground. Impunity for killings has been created as a result of States' acts or omissions.<sup>9</sup> Various treaty bodies have raised concerns over the systematic failure of States to investigate gender-related killings which have subsequently fostered a climate of impunity.<sup>10</sup>

---

<sup>5</sup> United Nations Office on Drugs and Crime, "UNODC, Global Study on Homicide 2019: Gender-related Killing of Women and Girls" (Vienna: United Nations Office on Drugs and Crime, July 2019), [https://www.unodc.org/documents/data-and-analysis/gsh/Booklet\\_5.pdf](https://www.unodc.org/documents/data-and-analysis/gsh/Booklet_5.pdf).

<sup>6</sup> United Nations Office on Drugs and Crime.

<sup>7</sup> United Nations Office on Drugs and Crime, "UNDOC, Global Study on Homicide: Executive Summary," Study (Vienna: United Nations Office on Drugs and Crime, July 2019), <https://www.unodc.org/documents/data-and-analysis/gsh/Booklet1.pdf>.

<sup>8</sup> Kate Wilkinson, "Five Facts: Femicide in South Africa," Africa Check, accessed January 15, 2020, <https://africacheck.org/reports/five-facts-femicide-in-south-africa/>.

<sup>9</sup> United Nations High Commissioner for Refugees, "Refworld | Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo A/HRC/20/16," accessed November 30, 2019, <https://www.refworld.org/docid/5008088f2.html>.

<sup>10</sup> *ibid*, para. 84.

Treaty monitoring bodies indicated a wider responsibility for States when conducting investigations into violations of the right to life that take place within a context of violence against women. In its General Comment No. 3, the African Commission notes:

The State is responsible for killings by private individuals which are not adequately prevented, investigated or prosecuted by the authorities. These responsibilities are heightened when an observable pattern has been overlooked or ignored, such as is often the case with respect to mob-justice, *gender-based violence, femicide*, [emphasis added] or harmful practices. States must take all appropriate measures effectively to respond to, prevent and eliminate such patterns or practices.<sup>11</sup>

In the case of Case of González et al. (“Cotton Field”) v. Mexico, it was found that:

The obligation to investigate effectively has a wider scope when dealing with the case of a woman who is killed [...] within the framework of a general context of violence against women.<sup>12</sup>

The Inter-American Court’s jurisprudence indicates that “certain lines of inquiry, which fail to analyze the systematic patterns surrounding a specific type of violations of human rights, can render the investigations ineffective.”<sup>13</sup>

---

<sup>11</sup> Commission africaine des droits de l’homme et des peuples and Gambia, *General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4): Adopted during the 57th Ordinary Session of the African Commission on Human and Peoples’ Rights Held from 4 to 18 November 2015 in Banjul, The Gambia*. (2015), para. 293.

<sup>12</sup> Inter-American Court of Human Rights, Case of González et al. (“Cotton Field”) v. Mexico (Preliminary Objection, Merits, Reparations, and Costs) (Inter-American Court of Human Rights November 16, 2009).

In a report on “Action against gender-related killing of women and girls”, recommendations made to States included the need to undertake practical measures to improve investigations of gender-related killings. States were called upon to adopt or review criminal policies including investigatory policies and ensure the timely and diligent investigation of each case of the gender-related killing of women.<sup>14</sup>

In the Americas region, the UN Women in collaboration with the UN Human Rights Office developed a Latin American Model Protocol for the investigation of gender-related killings of women (femicide/feminicide) aimed at, among others, promoting the incorporation of a gender perspective into investigations of gender-related killings.<sup>15</sup>

## 1.2 Problem statement

Between May-September 2017, over 20 women were gruesomely killed in Entebbe town, Wakiso district, in central Uganda, with twelve women showing signs of sexual assault and genital mutilation.<sup>16</sup> Every week or so, the media would report the murder of a woman in

---

<sup>13</sup> *ibid*, para. 366.

<sup>14</sup> United Nations High Commissioner for Refugees, “Refworld | Taking Action against Gender-Related Killing of Women and Girls : Resolution / Adopted by the General Assembly,” accessed November 30, 2019, <https://www.refworld.org/docid/532066034.html>.

<sup>15</sup> Regional Office for Central America OHCHR et al., *Latin American Model Protocol for the Investigation of Gender-Related Killings of Women*, accessed December 1, 2019, <https://www2.unwomen.org/-/media/field%20office%20americas/documentos/publicaciones/latinamericanprotocolforinvestigationoffemicide.pdf?la=en&vs=1721>.

<sup>16</sup> Uganda Human Rights Commission, “The 20th Annual Report To The Parliament of the Republic of Uganda 2017,” Annual Report (Uganda Human Rights Commission, 2017), [www.uhrc.ug/wp-content/uploads/2019/06/UHRC-20th-Annual-Report.pdf](http://www.uhrc.ug/wp-content/uploads/2019/06/UHRC-20th-Annual-Report.pdf); AMNESTY INTERNATIONAL, *AMNESTY*

Wakiso, a quiet district that had not traditionally reported high volumes of homicide according to the annual Uganda Police's Crime Report.<sup>17</sup> These gruesome killings drew attention nationally with Members of Parliament, civil society groups and others demanding effective responses from the Ugandan Police Force to prevent further killings as well as arrest and punish perpetrators.

In September 2017, the Minister of Internal Affairs presented an overview of the state authorities' investigation into the deaths of 21 of the victims to Parliament classifying the method of killing to be strangulation in eighteen of the cases, with nine of the group found with sticks inserted into their vaginas. The cause of death of three of the victims was not mentioned, and no explanation was given for this omission. The Minister of Internal Affairs stated that the following diverse motives for the killings were established: domestic violence, land conflict, ritual practices, serial killer and criminal activity. The Minister conjectured that the factors that encourage criminal activity and create an environment for it to thrive include alcohol and drug abuse, prostitution, moral decadence, indiscipline, misbehaviour and youth unemployment;<sup>18</sup> all of which are salient issues in Uganda, but with unclear linkages and no rationale given by the Minister of how these caused the murders of the women in Entebbe.

---

*INTERNATIONAL REPORT 2017/2018: The State of the World's Human Rights.* (Place of publication not identified: AMNESTY INTERNATIONAL UK, 2018).

<sup>17</sup> Uganda Police Force, "Annual Crime Report 2017," Annual Report (Uganda Police Force), accessed December 2, 2019, <https://www.upf.go.ug/wp-content/uploads/2018/07/ANNUAL-CRIME-REPORT-2017.pdf>; Cynthia Ibale, "Classifying Women Murders in South Africa and Uganda as Femicide, Final Paper for Violence Against Women Course, Central European University," March 2019.

<sup>18</sup> The Parliament of the Republic of Uganda, "The Parliament of Uganda Hansard 7 September 2017.Doc," September 7, 2019, <https://www.parliament.go.ug/documents/1138/hansards-2017-september>.

The outcomes raise questions to the cursory nature of the investigations, most prominently for lack of acknowledgement of the gender of the victims. A female parliamentarian criticized the Minister's report for being simplistic. A noticeable omission from the Minister's report was domestic violence as a cause of the killings. In one case the Minister mentioned having strong evidence linking the murder to domestic violence but never mentioned this as a cause for the perpetuation of violence.<sup>19</sup>

The omission of gender and domestic violence as a motivation for the rapes and killings, including the mutilation of victims' sexual organs, neglects acknowledgement of the inherently misogynistic nature of the crimes, obfuscating the capacity of the police to launch an effective investigation.

In this paper, I argue that the missing aspect of gender in the investigation obscured the motives behind the rapes and killings, impacting the capacity of the police and other relevant authorities to launch an effective investigation aimed at holding perpetrators to account and preventing further killings. In doing so, the state neglected its responsibility to protect human rights, particularly the right to life and bodily integrity, of its citizens.

The authorities ought to have given due consideration to the possibility that the killings could be gender-motivated, which constitutes a particularly egregious form of systematic killing notable for its gendered brutality. The omission of the gendered nature of the incredibly violent crimes - which were graphically published in Ugandan media - create a possibility in which the Uganda

---

<sup>19</sup> The Parliament of the Republic of Uganda.

institutions designed to protect the human rights of its citizens, including women, are failing to take appropriate measures to investigate these crimes. This was seen by some women's rights groups as a deliberate omission, as press on the sexual nature of the crimes was so widespread and the greatest amount of advocacy on the crimes was led by women's rights groups, that it was almost impossible to ignore the gendered dimensions.

### *1.3 Research Objective*

This paper examines how human-rights and gender-sensitive focused investigations from a more comprehensive approach to identifying threats to the right to life in the context of violence against women, and if this approach would assist states in fulfilling their obligations to protect and address human rights violations. Diligent criminal investigations when executed promptly and with a human rights and gender sensitive approach can contribute to the protection of the right to life and possibly prevent further crime.

#### Research question

Do states need to adopt a gender-sensitive approach when exercising their due diligence obligation to investigate gender-motivated killings? Would a failure to adopt a gender-sensitive approach in the investigation of gender-motivated killings negatively impact on ensuring the right to life and prevention of violence against women?

### *1.4 Hypothesis*

It is presupposed that States when exercising its due diligence obligation to investigate violations of the right to life as a result of the conduct of private actors pays attention to gender dimensions of such conduct will be able to observe a pattern of systematic attacks targeted towards women on based on their gender. This, in turn, would help in developing appropriate responses to ensure these violations are not encouraged by authorities through partial investigations.

### *1.5 Framing women killings as femicide*

Femicide was proposed as a gender-neutral alternative to homicide which was found to overlook the realities of inequality, oppression and systematic violence endured by women.<sup>20</sup> “First publicly introduced in 1975 at the International Tribunal on Crimes Against Women in Brussels and later defined by Diana Russell and Jill Radford, femicide was described as the “misogynistic killing of women by men.”<sup>21</sup> Russell later modified this definition by replacing “women” with “female” and “men” with “male” to cater for the varying victims/perpetrators who might not be included in a definition that restricted itself to the murder of women by men.<sup>22</sup> For purposes of this thesis, the term women shall be taken to include girls.

---

<sup>20</sup> Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo A/HRC/20/16 <<https://www.refworld.org/docid/5008088f2.html>> accessed 30 November 2019.

<sup>21</sup> PATH, MRC, WHO, InterCambios, “Conceptualizing Femicide in Strengthening Understanding Femicide: Using Research to Galvanize Action and Accountability,” in *D.E.H. Russell, Femicide: Politicizing the Killing of Females*, 2008, [https://path.azureedge.net/media/documents/GVR\\_femicide\\_rpt.pdf](https://path.azureedge.net/media/documents/GVR_femicide_rpt.pdf).

<sup>22</sup> Cynthia Ibale, “Classifying Women Murders in South Africa and Uganda as Femicide, Final Paper for Violence Against Women Course, Central European University.”

Since 1992, the term femicide has been redefined to encompass various forms of sexist killings. The broadened definition would also encompass “all manifestations of male sexism.”<sup>23</sup> The definitions have taken into account the context of killings of women in the private and public spheres.<sup>24</sup> Varying contexts in different parts of the world have contributed to the framing of gender-related killings.<sup>25</sup> The UN Human Rights Committee asserts that femicide is an extreme form of violence directed at girls and women and a grave form of assault on the right to life.<sup>26</sup> The killings are not isolated incidents that occur suddenly or unexpectedly but are the ultimate act of violence experienced in a continuum of violence.<sup>27</sup>

Femicide has also been used as a political term to criticize the state’s lack of diligence in investigating, prosecuting and preventing the perpetuation of this violence. In relation to the events in Ciudad Juarez, Mexico, where dozens of migrant women were killed over years with no criminal investigation, Marcela Lagarde developed the term feminicide to include the State’s complicit actions in the perpetuation of this extreme form of gender-based violence and therefore contributing to a state of impunity. She defines feminicide as a whole set of violent misogynistic acts against women that violate their human rights and culminate in the murder of women and

---

<sup>23</sup> Cynthia Ibale; PATH, MRC, WHO, InterCambios, “Conceptualizing Femicide in Strengthening Understanding Femicide: Using Research to Galvanize Action and Accountability.”

<sup>24</sup> PATH, MRC, WHO, InterCambios, “Conceptualizing Femicide in Strengthening Understanding Femicide: Using Research to Galvanize Action and Accountability.”

<sup>25</sup> Refugees, “Refworld | Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo A/HRC/20/16.”

<sup>26</sup> UN Human Rights Committee, “CCPR/C/GC/36.”

<sup>27</sup> Refugees, “Refworld | Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo A/HRC/20/16.”

girls. Her definition further provides that this violence can occur due to the authorities missive, negligent or collusion with assailants that perpetrate the violence and thereby blocking women's access to justice hence contributing to impunity.<sup>28</sup> To Ms. Lagarde, "feminicide is a state crime given that the state is incapable of guaranteeing respect for women's lives or human rights [...] to prosecute [...] prevent and eradicate the violence."<sup>29</sup>

For this thesis, Lagarde's definition of feminicide would be an appropriate adoption. The treating of the murder of women and girls as an isolated incident especially where there is a clear depiction of a pattern of violence which could have been identified through effective investigations raise serious concern about the State's approach in guaranteeing women lives free from violence.

## 1.6 Methodology

This research is primarily desk-based research with information obtained from library sources such as books, online journal articles, reports by UN Special Mechanisms, Human Rights Organisation Reports, Reports by State departments/ agencies, Human Rights Treaty Body Concluding Observations and General Comments, newspaper articles and commentaries on international law jurisprudence.

## 1.7 Limitations

---

<sup>28</sup> Rosa-Linda Fregoso & Cynthia Bejarano (eds.), "Preface by Marcela Lagarde y de Los Rios," in *Preface by Marcela Lagarde y de Los Rios* (Duke University Press, 2010).

<sup>29</sup> Rosa-Linda Fregoso & Cynthia Bejarano (eds.).

This research is primarily desk-based with reliance on secondary sources.

### *1.8 Justification of case study and comparators.*

The case study in this thesis is based on events that took place in Uganda starting in 2017. The shocking details of the gruesome manner in which these murders occurred and the frequency at which they occurred struck an interest in the author to delve a little deeper into the responsibility of States to respond to such violence and ensure the enjoyment of the right to life for women.

Once the author delved into the responsibility of State to investigate gender-related killings, it was discovered that progress in this field had taken off in the Americas region. One case that struck interest was the murders in Ciudad Juarez and development of legislation and other measures to deal with cases of femicide in Mexico. The killings in the cases of Ciudad Juarez did present a few similarities with the killings in Uganda prompting further interest as to whether Mexico would present a good learning ground for authorities in Uganda. Given that the pioneering case dealing with State responsibility to investigate gender-related killings was on the Ciudad Juarez case and the assistance Mexico has received to handle investigations, presents a good comparator.

The author selected South Africa as a second comparator considering its powerhouse position on the African continent when it comes to standard-setting in rights protection. Discussions on femicide in the South African context are well underway and recently the Executive in South Africa made commitments to tackle femicide in South Africa. These commitments included establishing an Interim Gender-based Violence and Femicide Committee and to develop a National Action for gender-based violence and femicide.

The three states, Uganda, Mexico and South Africa are State Parties to the International and Regional treaties analyzed in this paper. The regional human rights systems to which these States are a party to have drawn inspiration from each other with cases from the Inter-American system being constantly referred to by the African system as is evidenced in the jurisprudence analysed.

## 2 Due Diligence Standards

### 2.1 *Positive obligation to protect the right to life*

The right to life “is the most important and basic of human rights. It is the fountain from which all human rights spring. If it is infringed the effects are irreversible.”<sup>30</sup> Given that infringement of this right bears irreversible effects, international law has laid down stringent procedural safeguards to ensure the taking of a life is not done lightly.<sup>31</sup>

Article 6 of the International Covenant on Civil and Political provides that, “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”<sup>32</sup> Similar guarantees are provided in the African Charter on Human and Peoples’ Rights, “[e]very human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.”<sup>33</sup> The American Convention on Human Rights, “[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily

---

<sup>30</sup> Mr. S. Amos Wako, “Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. S. Amos Wako,” January 31, 1983, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G83/106/80/PDF/G8310680.pdf?OpenElement>; Christof Heyns and Thomas Probert, “Casting Fresh Light on the Supreme Right: The African Commission’s General Comment No. 3 on the Right to Life,” in *The Pursuit of a Brave New World in International Law: Essays in Honour of John Dugard*, ed. Tiyanjana Maluwa et al. (Leiden Boston: Brill Nijhoff, 2017).

<sup>31</sup> Mr. S. Amos Wako, “Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. S. Amos Wako.”

<sup>32</sup> UN General Assembly, “International Covenant on Civil and Political Rights” (1966), <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>; UN Human Rights Committee, “CCPR/C/GC/36.”

<sup>33</sup> Organisation of African Unity, “Refworld | African Charter on Human and Peoples’ Rights (‘Banjul Charter’),” accessed November 30, 2019, <https://www.refworld.org/docid/3ae6b3630.html>.

deprived of his life.”<sup>34</sup> And the European Convention on Human Rights, “[e]veryone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”<sup>35</sup>

In its General Comment 36, the UN Human Rights Committee defines deprivation of life as an “intentional or otherwise foreseeable and preventable life-terminating harm or injury, caused by an act or omission.”<sup>36</sup> There is no standard definition of what is considered as “arbitrary”. Several elements have been used to make this determination. One of these elements is legality. Although arbitrariness does not necessarily equate with “against the law”, any deprivation of life that is inconsistent with international law or domestic law is arbitrary.<sup>37</sup>

Another element is the principle of non-discrimination. The African Commission on Human and Peoples’ Rights states that “[a]ny deprivation of life resulting from a violation of the procedural or substantive safeguards in the African Charter, including on the basis of discriminatory grounds or practices, is arbitrary and as a result unlawful.”<sup>38</sup> By comparison, the UN Human

---

<sup>34</sup> Organization of American States (OAS), “American Convention on Human Rights, ‘Pact of San Jose’” (1969), <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

<sup>35</sup> Council of Europe, “European Convention on Human Rights as Amend,” accessed November 30, 2019, [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

<sup>36</sup> UN Human Rights Committee, “CCPR/C/GC/36.”

<sup>37</sup> UN Human Rights Committee.

<sup>38</sup> Commission africaine des droits de l’homme et des peuples and Gambia, *General Comment No. 3 on the African Charter on Human and Peoples’ Rights*.

Rights Committee notes that any deprivation of life that is based de jure or de facto on discrimination is arbitrary.<sup>39</sup>

States have the responsibility to protect the right to life by law and ensure that one is arbitrarily deprived of their life without due process.<sup>40</sup> This will require States to take legislative and other necessary measures to ensure the right and provide effective remedies and reparations in case of violation of this right.<sup>41</sup> Closely related to this is the State's obligation to carry out an investigation where the State knows or should have known of unlawful deprivation of life.<sup>42</sup> States parties bear the responsibility to adopt adequate measures to investigate arbitrary deprivation of life by private actors.<sup>43</sup> Failure of the State to duly execute its obligation may incur international liability.

## 2.2 *State Responsibility under International Law*

---

<sup>39</sup> UN Human Rights Committee, "CCPR/C/GC/36."

<sup>40</sup> Article 6(1) of the International Covenant on Civil and Political Rights provides, "[e]very human being has the inherent right to life. This right shall be protected by law." Available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; Article 2 of the European Convention on Human Rights provides, "[e]veryone's right to life shall be protected by law." Available at: [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf); Article 4 of the American Convention on Human Rights provides, "[e]very person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life." Available at: <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>; Article 4 of the African Charter on Human and Peoples' Rights provides, "[e]very human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right." Available at: <https://www.achpr.org/legalinstruments/detail?id=49>

<sup>41</sup> Op. cit. n.1, para. 4.

<sup>42</sup> Ibid, para 27,

<sup>43</sup> UN Human Rights Committee, "CCPR/C/GC/36."

State responsibility has been relied on to incur responsibility for internationally wrongful acts. A breach of its international obligation may entail a State's international responsibility.<sup>44</sup> A refusal to fulfill an international obligation implicates international responsibility.<sup>45</sup> Article 1 of the Draft Articles provides, "[e]very internationally wrongful act of a State entails the international responsibility of that State."<sup>46</sup> The wrongful act of a State "may consist in one or more actions or omissions or a combination of both."<sup>47</sup>

To establish the existence of internationally wrongful conduct of the State, two conditions must be met. "First, the conduct in question must be attributable to the State under international law. Secondly, for responsibility to attach to the act of the State, the conduct must constitute a breach of an international legal obligation in force for that State at that time."<sup>48</sup>

An "act of the State" must involve some action or omission by and through agents and representatives acting on behalf of the State. Under national law, State agents or organs consist of different legal persons who have distinct rights and obligations for which liability can arise.

---

<sup>44</sup> Maame Efua Addadzi-Koom, "'He Beat Me, and the State Did Nothing about It': An African Perspective on the Due Diligence Standard and State Responsibility for Domestic Violence in International Law," *AFRICAN HUMAN RIGHTS LAW JOURNAL*, 2019, 29.

<sup>45</sup> "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries - 2001," *State Responsibility*, n.d., 114.

<sup>46</sup> "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries - 2001."

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*

However, under international law, a State is treated as a unit and as such recognized as a single legal person.<sup>49</sup>

Conduct is considered an act of the state under international law if: exercised by a state organ;<sup>50</sup> a person or entity empowered under national law of the state to exercise governmental authority;<sup>51</sup> person or group is acting on instructions of or under direction or control of the State;<sup>52</sup> person or group is exercising elements of the governmental authority in the absence or default of the official authorities.<sup>53</sup> Conduct will also be considered an act of the State where the State acknowledges and adopts the conduct in question as its own.<sup>54</sup>

For a State to be held internationally responsible for actions of non-state actors, there has to be a sufficient nexus between the State and acts of non-state actors. The conduct of private actors must constitute an act of the State.<sup>55</sup> Relevant to this thesis is the question as to whether a State's responsibility is incurred in situations where an illegal act committed by non-state actors constitutes a human rights violation.

---

<sup>49</sup> Ibid.

<sup>50</sup> Ibid, Article 4.

<sup>51</sup> Ibid, Article 5.

<sup>52</sup> Ibid, article 8

<sup>53</sup> Ibid, article 9

<sup>54</sup> Ibid, article 11.

<sup>55</sup> Op. cit., n.5, p.9.

Scholars in support of general rules of international law on state responsibility applying to violations committed by non-state actors have relied on Article 12 of the Draft Articles.<sup>56</sup> Article 12 states, “[t]here is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.”<sup>57</sup> The last section “regardless of its origin” indicates that the articles are of general application to the international obligation of States.<sup>58</sup> This would then include state obligations arising from international human rights treaties.

One limitation to applying the doctrine of state responsibility for violations of human rights in the private sphere is there should be a connection between the States and conduct constituting a violation of human rights law. Human rights violations committed by private actors that do not constitute an act of the State will not generate state responsibility.<sup>59</sup>

Regional human rights tribunals have increasingly acknowledged that State responsibility can be incurred where a State failed to prevent conduct amounting to a human rights violation as a result of illegal conduct carried out by private persons. This rule was first formulated by the Inter-American Court of Human Rights (Inter-American Court) in 1988.

---

<sup>56</sup> Danwood Mzikenge, “The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights,” *Melbourne Journal of International Law* 5 (2004): 37.

<sup>57</sup> “Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries - 2001.”

<sup>58</sup> Mzikenge, “The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights”; “Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries - 2001.”

<sup>59</sup> Mzikenge, “The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights,” 10.

In *Velásquez Rodríguez v. Honduras*, the Inter-American Court examined conditions under which an act that violates rights recognized in the American Convention on Human Rights can be imputed to a State thereby establishing international responsibility.<sup>60</sup> The case was related to the practice of (enforced) disappearances. Manfredo Velásquez Rodríguez, a graduate student, disappeared after he was subjected to violent detention by members of the National Office of Investigations (DNI) and G-2 of the Armed Forces of Honduras.<sup>61</sup> In this case, the Inter-American Court found that Rodríguez' disappearance was carried out by state agents who acted under the cover of public authority. However, the Inter-American Court observed that even if this fact had not been proven, the failure of the State to act, "...is a failure on the part of Honduras to fulfill the duties it assumed under Article 1 (1) of the [American Convention on Human Rights], which obligated it to ensure Manfredo Velásquez the free and full exercise of his human rights."<sup>62</sup>

To determine whether a violation of human rights recognized under the American Convention could be imputed to the State, the Inter-American Court referred to obligations placed on State Parties under Article 1(1). Article 1 (1) requires State Parties "to respect the rights and freedoms recognized...and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms..."<sup>63</sup> Article 1 (1) places a positive obligation on States to ensure persons within their jurisdiction the free and full exercise of rights and freedoms. A consequence

---

<sup>60</sup> *Velásquez Rodríguez v Honduras* (Inter-American Court of Human Rights,) para. 160.

<sup>61</sup> *Velásquez Rodríguez v Honduras*.

<sup>62</sup> *Ibid*, para. 182.

<sup>63</sup> Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose."

of this obligation is the duty to prevent, *investigate* [emphasis added] and punish any violations of rights recognized in the American Convention.<sup>64</sup> The existence of a legal system alone is not enough as Governments are also required to conduct themselves effectively to ensure the enjoyment of rights.<sup>65</sup>

The Inter-American Court found that the obligation to ensure the enjoyment of rights extends to illegal acts of private persons that violate human rights as the State is “obligated to investigate every situation involving a violation of rights protected by the [American] Convention.”<sup>66</sup> Therefore, “an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, ...because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”<sup>67</sup>

Therefore in the case of non-state actors, international responsibility of States arises out of a failure to meet its obligation to ensure the enjoyment of rights due to a lack of diligence in preventing or responding to a violation. The duty to investigate is an obligation of means and not results. It will require Governments to use means at their disposal to carry out serious and

---

<sup>64</sup> *Velásquez Rodríguez v Honduras* (n 42), para. 166-167.

<sup>65</sup> *ibid*, para. 167; Lee Hasselbacher, ‘State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection’ 8 *Northwestern Journal of International Human Rights* 27.

<sup>66</sup> *Velásquez Rodríguez v Honduras* (n 42), para. 176.

<sup>67</sup> *ibid*, para. 172.

effective investigations ensuring that private actors do not act with impunity to the detriment of enjoyment of rights.<sup>68</sup>

Similar to the Inter-American Court, the African Commission on Human and Peoples' Rights (African Commission) relied on general obligations of State Parties under the African Charter on Human and Peoples' Rights to establish international responsibility of States for violations as a result of conduct by non-state actors.

In *Commission Nationale des Droits de l'Homme et des Libertés v Chad*, the African Commission considered a complaint that alleged several violations of rights contained in the African Charter had occurred in Chad. The Complainant alleged that killings, disappearances, torture, arbitrary arrests and harassment were committed by state and non-state agents. It was further alleged that Chad failed to protect rights in the African Charter from violations by non-state actors. Chad, on the other hand, claimed that violations complained of were not committed by State agents and that it had no control over violations committed by non-state agents as Chad was in a state of civil war. The Government of Chad gave a blanket denial of responsibility<sup>69</sup>

The African Commission recalled that Article 1 of the African Charter requires State parties to “not only recognize rights and freedoms adopted by the Charter, but they should also ‘undertake.....measures to give effect to them.’ In other words, if a State neglects to ensure the rights in the African Charter, this can constitute a violation, even if the State or its agents are not

---

<sup>68</sup> *ibid*, para. 291.

<sup>69</sup> *Commission Nationale des Droits de l'Homme et des Libertés v Chad, Merits, Communication 74/92, 9th Annual Activity Report 1995* [1995] African Commission on Human and Peoples' Rights Communication 74/92, Oxford Reports on International Law [ORIL] paras. 1-6, 18-19 & 24.

the immediate cause of the violation.”<sup>70</sup> The African Commission went on to find that Chad had the responsibility to secure the safety and liberty of its citizens and conduct investigations into murders even where violations committed were not attributable to its state agents.<sup>71</sup>

Similar to the Inter-American Court, the African Commission found that State Parties to the African Charter have a positive obligation to ensure the enjoyment of rights and freedoms. Such obligation does extend to ensuring that acts of private persons do not infringe on the enjoyment of rights. In situations where violations have been committed by acts of non-state agents, States have to investigate. The African Commission in its General Comment on the Right to Life has explained that that States should protect individuals from violations by private individuals or entities and can be held responsible for failure to carry out adequate investigations.<sup>72</sup>

The European Court on Human Rights (European Court) interpretation of State responsibility in accordance with the right to life under Article 2 (Right to Life) of the European Convention on Human Rights and Fundamental Freedoms (European Convention) was first referred to in relation to conduct by State actors. In *McCann and others v. the United Kingdom*, the European Court held that,

The obligation to protect the right to life under this provision (art. 2), read in conjunction with the State’s general duty under Article 1 (art. 2+1) of the Convention to "secure to

---

<sup>70</sup> African Commission on Human and Peoples’ Rights, Oxford Reports on International Law [ORIL].

<sup>71</sup> Ibid, para. 22.

<sup>72</sup> Commission africaine des droits de l’homme et des peuples and Gambia, *General Comment No. 3 on the African Charter on Human and Peoples’ Rights*.

everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State.<sup>73</sup>

The European Court notes, "that a general legal prohibition of arbitrary killing by the agents of the State would be ineffective, in practice, if there existed no procedure for reviewing the lawfulness of the use of lethal force by State authorities."<sup>74</sup> This interpretation has the effect of securing a realistic guarantee of rights and freedoms under the European Convention.<sup>75</sup>

In a 1998 decision, the European Court considered whether the United Kingdom, as a state party to the European Convention failed to protect the right to life of the second respondent and his father, therefore in breach of Article 2 of the European Convention.<sup>76</sup> In *Osman v. the United Kingdom*, the first applicant's husband was shot dead by Mr. Paul Paget-Lewis, a former teacher to the second applicant. The second applicant, son to the first applicant and deceased, was wounded in the shooting incident.<sup>77</sup> The applicants alleged that despite clear warning signs given

---

<sup>73</sup> Case of McCann and others v. the United Kingdom, No. App. No(s) 18984/91 (European Court on Human Rights (Grand Chamber) September 27, 1995).

<sup>74</sup> Ibid.

<sup>75</sup> J. Chevalier-Watts, "Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?," *European Journal of International Law* 21, no. 3 (August 1, 2010): 701–21, <https://doi.org/10.1093/ejil/chq045>.

<sup>76</sup> European Court of Human Rights, Case of *Osman v. The United Kingdom*, No. App No(s) 23452/94 (European Court of Human Rights October 28, 1998).

<sup>77</sup> Ibid, para. 10.

to the authorities, there was a failure of the State to “take appropriate and adequate preventive measures to secure effective protection for their lives from risk.”<sup>78</sup>

The European Court explained that Article 2 of the European Convention imposes an obligation on States “not only to refrain from intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction.”<sup>79</sup> Similar to the Inter-American Court in the *Velasquez Rodriguez* case, the European Court elucidates that a State’s obligation “extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offenses against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions.”<sup>80</sup>

In a later decision, the European Court has interpreted positive obligations under Article 2 to include safeguarding “the lives of those within its jurisdiction to apply in the context of any activity, whether public or not, in which the right to life may be at stake.”<sup>81</sup>

In the case of *Opuz v Turkey*, the European Court for the first time considers the State’s duty to protect its citizens from threats to their right to life posed by the criminal acts of third parties

---

<sup>78</sup> Ibid, para. 103

<sup>79</sup> *Case of Osman v. The United Kingdom* (n 55), para. 115.

<sup>80</sup> Ibid, para. 115; *Hasselbacher* (n 47).

<sup>81</sup> Judgment (Merits and Just Satisfaction), delivered by the Grand Chamber, Centre for Legal Resources on behalf of *Valentin Campeanu v Romania*, No(s) 47848/08, ECHR 2014, para 130; European Court on Human Rights, Guide on Article 2 of the European Convention on Human Rights, Right to life, 30 April 2019

with respect to domestic violence.<sup>82</sup> The judgment makes it clear that the State does have a positive obligation to prevent violence against women in the domestic sphere and systematic failure to act on such an obligation would amount to a violation of the prohibition of discrimination.<sup>83</sup> Taking into account difficulties in policing modern societies, the Court found that “the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.”<sup>84</sup> For a positive obligation to arise, it is necessary to establish that the authorities had knowledge or ought to have known of the existence of a real and immediate threat to the life of an individual from criminal acts of a third party and failed to take necessary steps within their power to avoid this risk.<sup>85</sup>

### 2.3 *State Responsibility in relation to gender-related killings*

From the 1980s, women rights activists have been utilizing the existing human rights framework to broaden its scope in terms of responding to violations inherent in women’s experiences through the doctrine of State responsibility. “This paved the way for the recognition of violence

---

<sup>82</sup> Burton, Mandy. 2010. “The Human Rights of Victims of Domestic Violence: Opuz v Turkey.” *Child and Family Law Quarterly*, no. Issue 1: 131.  
<http://search.ebscohost.com/login.aspx?direct=true&db=edshol&AN=edshol.hein.journals.chilflq22.10&site=eds-live>.

<sup>83</sup> Tarik Abdel-Monem, “Opuz v. Turkey: Europe’s Landmark Judgment on Violence against Women,” n.d., 5.

<sup>84</sup> Case of Opuz v Turkey (Judgment), No. (Application no. 33401/02) (European Court on Human Rights September 6, 2009).

<sup>85</sup> Ibid

against women as a human rights violation for which States could be held responsible, regardless of whether the perpetrator is a public or private actor.”<sup>86</sup>

International human rights treaty monitoring bodies have also developed standards and made specific reference to special measures that a State might be required to take to guard against threats to enjoyment of rights including right to life or response measures in case of violations. Failure by a State to act with due diligence to prevent or investigate such violence will incur international responsibility. The due diligence principle has provided the missing link between human rights obligations and conduct of private persons.<sup>87</sup> The African Commission states that the “State also has an obligation to protect individuals from violations or threats at the hands of other private individuals or entities, including corporations.”<sup>88</sup> For killings by private actors, a State will be responsible if these incidents “are not adequately prevented, investigated or prosecuted by the authorities.”<sup>89</sup>

In its General Recommendation 19, the Committee on the Elimination of Discrimination against Women (Committee on CEDAW) states that “[g]ender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of

---

<sup>86</sup> Refugees, ‘Refworld | Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences on the Due Diligence Standard as a Tool for the Elimination of Violence against Women’ (n 15), para. 57.

<sup>87</sup> Office of the United Nations High Commissioner for Human Rights, “OHCHR | Violence against Women,” accessed January 14, 2020, <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/VAW.aspx>.

<sup>88</sup> Commission africaine des droits de l’homme et des peuples and Gambia, *General Comment No. 3 on the African Charter on Human and Peoples’ Rights*.

<sup>89</sup> Ibid, para 39.

article 1 of the Convention. This includes the right to life.”<sup>90</sup> The Committee on CEDAW acknowledges that States may be responsible for private acts should they fail to act with due diligence to prevent or investigate and punish such acts of violence.<sup>91</sup>

In 1993, the UN General Assembly adopted the Declaration on the Elimination of Violence against Women, the first international instrument that specifically addresses the issue.<sup>92</sup> The Declaration affirms that “violence against women constitutes a violation of rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms.”<sup>93</sup> The Declaration defines violence against women to include violence condoned by the State wherever it occurs.<sup>94</sup> The Declaration reiterates the due diligence obligation of states to “to prevent, *investigate* [emphasis added] and... punish acts of violence against women, whether those acts are perpetrated by the State or by private persons” as is provided in General Recommendation 19.<sup>95</sup>

---

<sup>90</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), “CEDAW General Recommendation No. 19: Violence against Women,” 1992, <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.

<sup>91</sup> Ibid, para.9.

<sup>92</sup> Office of the United Nations High Commissioner for Human Rights, ‘Women’s Rights Are Human Rights’ (United Nations Office on Human Rights 2014) United Nations Publication HR/PUB/14/2 <<https://www.ohchr.org/Documents/Publications/HR-PUB-14-2.pdf>> accessed 14 January 2020, pg. 74.

<sup>93</sup> UN General Assembly, “Declaration on the Elimination of Violence against Women, Proclaimed by General Assembly Resolution 48/104 of 20 December 1993” (UN General Assembly, December 20, 1993), <https://www.ohchr.org/Documents/ProfessionalInterest/eliminationvaw.pdf>.

<sup>94</sup> *ibid*, Article 2(c).

<sup>95</sup> *ibid*, Article 4(c).

The Committee on CEDAW further elaborates on due diligence obligation of States in relation to gender-based violence. General Recommendation No. 35 affirms that under general international law, acts or omissions of private actors may engage international responsibility of the state.<sup>96</sup> The Committee on CEDAW explains that the due diligence obligation under Article 2(e) of the Convention places a duty on States “to take all appropriate measures to ... investigate... acts or omissions by non-State actors that result in gender-based violence against women.”<sup>97</sup> Failure of the State to investigate such acts constitutes a human rights violation.<sup>98</sup>

In 2003, the Committee on CEDAW conducted its first inquiry to investigate reports it had received about the abduction, rape and murder of women in and around Ciudad Juárez, State of Chihuahua, Mexico.<sup>99</sup> At least 320 women had been murdered in Ciudad Juárez and this violence was said to have been increasing. It was stated that the victims were targeted because they were women and that these gender-based crimes had been tolerated for years with total indifference from the authorities.<sup>100</sup> In its detailed report, the Committee on CEDAW noted a lack of due diligence from authorities as there had been no serious and thorough investigations into the murders and disappearances of the women and that impunity had prevailed for an entire decade.

---

<sup>96</sup> Committee on the Elimination of Discrimination and against Women, ‘General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19’ <<https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>>, para. 24.

<sup>97</sup> *ibid*, para. 24(2)(b).

<sup>98</sup> *Ibid*.

<sup>99</sup> Committee on the Elimination of Discrimination against Women, “Report on Mexico Produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico” (Committee on the Elimination of Discrimination against Women, January 27, 2005), <https://www.refworld.org/docid/4a54bc0e1a.html>.

<sup>100</sup> Committee on the Elimination of Discrimination against Women.

Given that this was not under the Committee's Complaint's procedure, there was no determination of a violation however it can be inferred from the Committee's findings that Mexico failing to fulfill its due diligence obligations in accordance with Article 2 of CEDAW. The Committee on CEDAW did make numerous recommendations to Mexico including compliance with its obligation to eliminate discrimination against women by non-state actors and thorough investigation of crimes committed against women including the investigation of the complicity of authorities in perpetuation of these crimes.<sup>101</sup>

Shortly after the Committee on CEDAW published its report on its mission to Mexico, the Inter-American Court issued a decision where it considered Mexico's international responsibility for the disappearance and subsequent death of three female victims whose bodies were found in a cotton field in Ciudad Juarez. Recalling its principle set in the Velasquez Rodriguez case, the Inter-American Court in *González et al. v. Mexico* (Cotton Field case) stated that the obligation to investigate violations of right to life arises out of the general obligation to guarantee right to life under Article 1 of the American Convention.<sup>102</sup> As a State Party to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), Mexico had an additional duty to act with due diligence to investigate and punish violence against women.<sup>103</sup>

---

<sup>101</sup> Committee on the Elimination of Discrimination against Women.

<sup>102</sup> *Case of González et al. ("Cotton Field") v. Mexico* (Preliminary Objection, Merits, Reparations, and Costs) (n 13), para. 287.

<sup>103</sup> *ibid*; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ('Convention of Belem do Para') 1994, Article 7.

The Inter-American Court iterates that the duty to investigate is an obligation of means rather than result that must be complied with diligently in order to avoid impunity and repetition.<sup>104</sup> The Inter-American Court reiterated that this obligation remains even if the violation(s) is attributed to individuals, “because, if their acts are not investigated genuinely, they would be, to some extent, assisted by the public authorities, which would entail the State’s international responsibility.”<sup>105</sup> Similarly, in *MC v Bulgaria*, the European Court confirmed that “States have a positive obligation to ensure effective criminal-law provisions through effective investigation.”<sup>106</sup>

For cases dealing with murder of women within the context of violence against women, the Inter-American Court found that the scope of the duty to investigate is widened.<sup>107</sup> This particularly so because it is important to pursue an investigation into an attack that is gender-motivated with rigor and impartiality in order to ensure such violence is not tolerated in society nor is impunity fostered.<sup>108</sup> Once State authorities are aware or made aware of a violation, they are expected to initiate, ex officio and without delay, a serious, impartial and effective

---

<sup>104</sup> Inter-American Court of Human Rights, Case of González et al. (“Cotton Field”) v. Mexico (Preliminary Objection, Merits, Reparations, and Costs).

<sup>105</sup> *ibid*, para. 291.

<sup>106</sup> United Nations, “In-Depth Study on All Forms of Violence against Women: Report of the Secretary-General,” n.d., <https://www.refworld.org/docid/484e58702.html>.

<sup>107</sup> *ibid*, para. 293.

<sup>108</sup> *Ibid*.

investigation whilst making use of all available legal means.<sup>109</sup> The Inter-American Court's jurisprudence indicates that "certain lines of inquiry, which fail to analyze the systematic patterns surrounding a specific type of violations of human rights, can render the investigations ineffective."<sup>110</sup>

Where there is a pattern of murders that took place within a context of violence against women, the obligation to investigate with due diligence requires that consideration is given to establishing whether there is a connection between the murders.<sup>111</sup> In the Cotton Field case, the Inter-American Court found that a delay in investigations and absence of lines of inquiry into the context of violence within which the three women were killed revealed that Mexico failed to ensure right to life through a conscientious and competent investigation.<sup>112</sup>

Similar to the Inter-American Court, the African Commission has indicated that a State's duty to investigate is heightened when there is an observable pattern of violence as is often the case in respect to cases of femicide and gender-based violence.<sup>113</sup> This greater State responsibility requires States to identify, and take appropriate steps to respond, prevent and eliminate patterns

---

<sup>109</sup> Inter-American Court of Human Rights, Case of González et al. ("Cotton Field") v. Mexico (Preliminary Objection, Merits, Reparations, and Costs).

<sup>110</sup> *ibid*, para. 366.

<sup>111</sup> *Ibid*, para. 368

<sup>112</sup> *Ibid*, para. 388.

<sup>113</sup> Commission africaine des droits de l'homme et des peuples and Gambia, *General Comment No. 3 on the African Charter on Human and Peoples' Rights*.

or trends motivating violence.<sup>114</sup> It may be inferred that failure to take into account certain lines of inquiry necessary to verify whether murders being investigated relate to a growing pattern of violence may render such investigations ineffective in ensuring an effective response to violations of right to life. The African Commission has affirmed that international responsibility for States will be incurred where killings by private individuals are not effectively investigated.<sup>115</sup>

The UN Principles to Combat Impunity are “rooted in the bedrock obligation of states to ensure protection of individuals from grievous harm.”<sup>116</sup> The UN Principles explicitly state that impunity can arise from “failure by States to meet their obligation to investigate violations.”<sup>117</sup> The African Commission has underlined that a systematic failure by a State to fulfill its positive obligations related to the right to life by investigating any potentially unlawful killing may indicate a culture of impunity which a State should not tolerate.<sup>118</sup> Failure of States to hold

---

<sup>114</sup> Christof Heyns and Thomas Probert, ‘Casting Fresh Light on the Supreme Right: The African Commission’s General Comment No. 3 on the Right to Life’ in Tiyanjana Maluwa and others (eds), *The pursuit of a brave new world in international law: essays in honour of John Dugard* (Brill Nijhoff 2017), pg. 68.

<sup>115</sup> Commission africaine des droits de l’homme et des peuples and Gambia (n 54), para. 39.

<sup>116</sup> Frank Haldemann et al., eds., *The United Nations Principles to Combat Impunity: A Commentary*, Oxford Commentaries on International Law (Oxford New York, NY: Oxford University Press, 2018).

<sup>117</sup> Diane Orentlicher, “Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity,” February 8, 2005, <https://undocs.org/pdf?symbol=en/E/CN.4/2005/102/Add.1>.

<sup>118</sup> Commission africaine des droits de l’homme et des peuples and Gambia, *General Comment No. 3 on the African Charter on Human and Peoples’ Rights*.

perpetrators accountable not only creates a culture of impunity but normalizes violent behavior.<sup>119</sup>

## 2.4 Conclusion

As elaborated above, States have the primary responsibility to take that all necessary measures to ensure due diligence is exercised to investigate arbitrary deprivations of life by private actors. This is particularly the case where there is specific information indicating a pattern of killings where victims are linked by sex.<sup>120</sup> States' responsibility is heightened where there is an observable pattern of murders of women in the context of violence against women. It is essential that these investigations are prompt, effective and thorough, impartial, independent and transparent. It is also essential that this obligation is discharged in a non-discriminatory manner and in good faith.<sup>121</sup> Investigations by States are to be initiated ex officio and in a timely manner.<sup>122</sup>

---

<sup>119</sup> Refugees, "Refworld | Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo A/HRC/20/16."

<sup>120</sup> United Nations, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death 2016: The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (UN, 2018), <https://doi.org/10.18356/0389ae17-en>; Inter-American Court of Human Rights, Case of González et al. ("Cotton Field") v. Mexico (Preliminary Objection, Merits, Reparations, and Costs); Commission africaine des droits de l'homme et des peuples and Gambia, *General Comment No. 3 on the African Charter on Human and Peoples' Rights*.

<sup>121</sup> United Nations, *The Minnesota Protocol on the Investigation of Potentially Unlawful Death 2016*.

<sup>122</sup> Regional Office for Central America OHCHR et al., *Latin American Model Protocol for the Investigation of Gender-Related Killings of Women*; UN Human Rights Committee, "UN Human Rights Committee (HRC), CCPR General Comment No. 6: Article 6 (Right to Life)," accessed April 22, 2019, [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf).

Though duty to investigation is an obligation of means and not result, it does not mean that they should be carried out as a mere formality preordained to be ineffective. Actions of the State should not be seen as tolerate violations of right to life, breeding a culture of impunity.<sup>123</sup>

---

<sup>123</sup> Inter-American Court of Human Rights, Case of González et al. (“Cotton Field”) v. Mexico (Preliminary Objection, Merits, Reparations, and Costs).

### 3 The nature of investigations in Mexico, South Africa and Uganda

This next section shall provide an overview of the situation on investigations of gender-motivated murders that have occurred in Mexico, South Africa and Uganda. Bearing in mind the above mentioned due diligence standards, this section examines whether the abovementioned states have adapted any approaches when carrying out their obligations to ensure the deprivations of the right to life are adequately investigated especially where there is a pattern of gender-based violence.

#### 3.1 Mexico

Mass murders of women from Ciudad Juarez, a border city in the United States of Mexico attracted regional and international attention. Civil society organisations sought interventions from the human rights treaty monitoring body with the mandate to examine Mexico's responses to reports of the grave and systematic murders of women that had been taking place for almost a decade.<sup>124</sup>

"From 1993 to 2002, it is reported that at least 268 women, between the age of 15-25 years, lost their lives. These murders were soon characterized as femicides, a term that has been

---

<sup>124</sup> simonecusack, "Using the Inquiry Procedure to Ensure Gender Equality (Equality Now)," *Optional Protocol to CEDAW* (blog), August 19, 2012, <https://opcedaw.wordpress.com/2012/08/19/using-the-inquiry-procedure-to-ensure-equality-equality-now/>; Committee on the Elimination of Discrimination against Women, "Report on Mexico Produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico"; Inter-American Court of Human Rights, Case of González et al. ("Cotton Field") v. Mexico (Preliminary Objection, Merits, Reparations, and Costs).

increasingly used by the feminist movement to draw attention to gruesome murders of women.”<sup>125</sup>

A 2005 report from Committee on CEDAW’s inquiry into Mexico noted a lack of due diligence from authorities as there had been no serious and thorough investigations into the murders and disappearances of the women and that impunity had prevailed for an entire decade.<sup>126</sup> In relation to the investigation of the crimes, the Committee on CEDAW made detailed recommendations to Mexico which included: ensuring the total autonomy and independence of experts in their investigation of the crimes and thorough investigation into negligence and complicity of public authorities in disappearances and murders of women.<sup>127</sup>

An immediate effect of this report was the creation of “the Office of the Special Prosecutor with a specific mandate to investigate the murders in Ciudad Juárez.”<sup>128</sup> It is reported that the Special Prosecutor did investigate and identify hundreds of state officials who acted with administrative and criminal negligence when handling investigations. According to reports from the Special Prosecutor, it was indicated that the murders in Ciudad Juárez were likely to go unpunished due

---

<sup>125</sup> Rosa-Linda Fregoso & Cynthia Bejarano (eds.), “Preface by Marcela Lagarde y de Los Rios”; Cynthia Ibale, “Classifying Women Murders in South Africa and Uganda as Femicide, Final Paper for Violence Against Women Course, Central European University.”

<sup>126</sup> Committee on the Elimination of Discrimination against Women, “Report on Mexico Produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico.”

<sup>127</sup> Committee on the Elimination of Discrimination against Women.

<sup>128</sup> simonecusack, “Using the Inquiry Procedure to Ensure Gender Equality (Equality Now).”

to the serious deficiencies in the original investigations and long lapses in the time since the crimes were committed.<sup>129</sup>

Binding decisions have been issued against Mexico for its failure to comply with due diligence obligations by carrying out effective investigations. The Inter-American Court has been pivotal in holding States including Mexico, internationally responsible for violating their human rights obligations. In the 2009 Cotton Field case, the Inter-American Court found that the delay in the investigations, the absence of lines of inquiry that took into account the context of violence against women in which the three women were killed, among others, revealed that Mexico had failed to comply with ensuring the rights to life for the victims by conducting a conscientious and competent investigation. The Court concluded that impunity existed and that the measures adopted under domestic law were insufficient to deal with the serious human rights violations.<sup>130</sup>

It should be noted that since the above ruling, Mexico has established Special Prosecutor's Office (Fiscalía Especial) for Crimes of Violence against Women and the Special Committee to Consider and Monitor Investigations of Femicide in Mexico. Mexico had also initiated the process of femicide a crime.<sup>131</sup> Despite these measures, there remain inconsistencies in protections afforded to women. Though many states in Mexico have passed laws criminalizing femicide, there are inconsistencies in legislation from state to state. There is no agreement on

---

<sup>129</sup> simonecusack.

<sup>130</sup> Inter-American Court of Human Rights, Case of González et al. ("Cotton Field") v. Mexico (Preliminary Objection, Merits, Reparations, and Costs).

<sup>131</sup> Committee on the Elimination of Discrimination, "Consideration of Reports Submitted by States Parties under Article 18 of the CEDAW, Combined Seventh and Eighth Periodic Report of States Parties: Mexico\*" (Committee on the Elimination of Discrimination against Women, February 7, 2011), [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=MEX&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=MEX&Lang=EN).

whether femicide is a crime on its own or aggravation of homicide. It is also vital that legislation criminalizing femicide makes recognition of gender-based reasons for the killings to effectively combat violence.<sup>132</sup> Out of 33 states in Mexico, 15 of them have included the crime of femicide in their criminal codes. A lack of a unified national approach in charging and investigating femicide as a uniquely-motivated crime impacts the possibility of ensuring an effective response to killings is implemented across all of Mexico.<sup>133</sup> The Committee on CEDAW recommended that Mexico harmonizes state-level legislation to ensure that feminicide is criminalized in all state penal codes and standardize police investigation protocols for feminicide across the country for the effective enforcement of criminal law provisions on feminicide. The Committee also recommended that Mexico make it a priority to investigate, prosecute and adequately punish perpetrators of feminicide including non-State actors.<sup>134</sup>

In its concluding observations to the seventh and eighth periodic report of Mexico, the Committee on CEDAW expressed concern that Mexico's strategy to combat organized crime negatively impacted on due diligence obligations to prevent violence against women as women and girls were still being subjected to increasing levels of femicide by non-state actors. The Committee noted that despite the adoption of the General Act on Women's Access to a Life Free of Violence defining feminicide as the extreme form of gender violence against women,

---

<sup>132</sup> Isabel Cholbi, "Femicide in Mexico: What Happens When the State Looks the Other Way," *Berkley Political Review*, April 17, 2019, <https://bpr.berkeley.edu/2019/04/17/femicide-in-mexico-what-happens-when-the-state-looks-the-other-way/>.

<sup>133</sup> Isabel Cholbi.

<sup>134</sup> Committee on the Elimination of Discrimination Against Women, "Concluding Observations on the Ninth Periodic Report of Mexico," July 25, 2018.

increasing numbers of femicide continue to be committed in several states in Mexico. The Committee expressed further concern that inaccuracies in the procedures to record and document killings of women undermined the proper investigation of cases.<sup>135</sup> Mexico was urged to comply with its due diligence obligations to prevent violence against women, including femicide, and investigate, prosecute and punish non-state perpetrators.<sup>136</sup>

In the UN Secretary General's report on action against gender-related killing of women, it is stated that the UN-Women assisted Mexico in carrying out an analysis of penal codes and civil laws and provided support aimed at addressing all forms of violence against women including gender-related killing.<sup>137</sup> The Latin American Model Protocol for the investigation of gender-related killings of women developed by the UN Women was informed by case studies from Mexico. The Model Protocol presents a very important tool for assisting Mexican authorities tasked with the investigation to comply with their due diligence obligations. The United Nations Office of Drugs and Crime has complemented efforts by working with the Mexican police to strengthen investigation processes in femicide cases and improve investigation protocols, based on a gender perspective.<sup>138</sup>

---

<sup>135</sup> Committee on the Elimination of and Discrimination against Women, "Concluding Observations of the Committee on the Elimination of Discrimination against Women: Mexico" (Committee on the Elimination of Discrimination against Women, August 7, 2012).

<sup>136</sup> Committee on the Elimination of and Discrimination against Women.

<sup>137</sup> UN General Assembly, "Action against Gender-Related Killing of Women and Girls: Report of the Secretary General" (UN General Assembly, June 16, 2015), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V15/043/26/PDF/V1504326.pdf?OpenElement>.

<sup>138</sup> UN General Assembly.

Even with these various efforts made to improve their responses to femicide, investigations into murders remain inadequate.<sup>139</sup> Amnesty International has indicated that a culture of impunity continues to thrive due to lack of adequate training of prosecutorial authorities to identify gender-based motives behind the murders, harmful prejudice and gender stereotypes that cloud investigations, untimely initiation of investigations and poor storage of evidence.<sup>140</sup>

Judicial authorities in Mexico are providing necessary scrutiny to ensure investigations are carried out effectively. In a 2015 decision, Mexico's Supreme Court analysed the proceedings undertaken by each public servant investigating the murder that was a result of domestic violence. The perpetrator, in this case, was a public servant who used his position to conceal evidence and provide false statements. However, the victim's mother did not believe her daughter had committed suicide as per the information she received from her daughter's husband. The Court found that the authorities investigating the case did not apply a gender-sensitive approach to the investigations.<sup>141</sup> This decision represents a gradual progression of defined standards at the regional level being implemented at the domestic level. Such litigation before domestic courts is vital in holding authorities accountable for their actions and ensuring the implementation of due diligence obligations at the domestic level.

---

<sup>139</sup> Amnesty International, "Mexico: Submission to the Committee on the Elimination of Discrimination Against Women" (Amnesty International, July 2018), [https://doi.org/10.1163/2210-7975\\_HRD-9211-20180209](https://doi.org/10.1163/2210-7975_HRD-9211-20180209).

<sup>140</sup> Amnesty International.

<sup>141</sup> "The Long Road to Justice, Prosecuting Femicide in Mexico," UN Women, November 29, 2017, <https://www.unwomen.org/news/stories/2017/11/feature-prosecuting-femicide-in-mexico>.

### 3.2 *South Africa*

For a country not in conflict, the rates of femicide and domestic violence remain extremely high.<sup>142</sup> South Africa's National Development Plan confirms that the fear of crime "has consequences for women and girls and their ability to achieve their potential in every sphere of social and productive life. Gender-based violence in all its forms denies women and girls the opportunity to achieve equality and freedoms enshrined in the Constitution."<sup>143</sup> The high rates of sexual violence have earned South Africa the harrowing title as the "rape capital of the world".<sup>144</sup> 2017/2018 data from the South African Police Service indicates that a woman is murdered every

---

<sup>142</sup> ISSAfrica.org, "26th AU Summit: Women's Rights beyond Promises and Paper Tigers," ISS Africa, January 27, 2016, <https://issafrica.org/iss-today/26th-au-summit-womens-rights-beyond-promises-and-paper-tigers>.

<sup>143</sup> Statistics South Africa, "Crime against Women in South Africa An In-Depth Analysis of the Victims of Crime Survey Data 2018" (Statistics South Africa, June 2018), <https://www.justice.gov.za/vg/femicide/docs/201806-CrimeStats.pdf>.

<sup>144</sup> Statistics South Africa.

3 hours.<sup>145</sup> A study conducted by researchers from the South African Medical Research Council found gender-based violence prevention to be failing in South Africa.<sup>146</sup>

The South African Constitutional Framework tasks the South African Police Service with the duty to investigate crime including investigation of crimes that threaten the safety or security of any community.<sup>147</sup> Article 11 of the Bill of Rights in the South African Constitution states: “[e]veryone has the right to life.”<sup>148</sup> The Bill of Rights also provides for the right to freedom and security of the person, which includes the “right to be free from all forms of violence from either public or private sources.”<sup>149</sup> The obligation to protect rights provided in the Bill of Rights lies with the State.<sup>150</sup>

Unlike Mexico, the South African legislation does not include a crime of femicide. As a State Party to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, South Africa is required to undertake appropriate measures to adopt legislative

---

<sup>145</sup> Kate Wilkinson, “Five Facts: Femicide in South Africa.”

<sup>146</sup> Naeemah Abrahams et al., “Intimate Partner Femicide in South Africa in 1999 and 2009,” *PLOS Medicine* 10, no. 4 (April 2, 2013): e1001412, <https://doi.org/10.1371/journal.pmed.1001412>.

<sup>147</sup> The Constitution of the Republic of South Africa, 1996, Article 205(3); South African Police Service, Constitutional Framework, available at: <https://www.saps.gov.za/about/about.php>

<sup>148</sup> Ibid The Constitution of the Republic of South Africa, 1996, available at: <https://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>

<sup>149</sup> Ibid, Article 12.

<sup>150</sup> Ibid, Article 7(2).

and other measures to ensure the prevention, punishment and eradication of all forms of violence against women.<sup>151</sup>

South Africa's Domestic Violence Act of 1998 provides a framework of protection and recognizes a wide range of forms of abuse including physical, psychological, sexual, emotional, economic and verbal. The Act provides for protection orders and confiscation of weapons from those who have court orders against them.<sup>152</sup>

“Despite the widespread use of the term femicide by South African civil society and the media, the framing of gender-related murders as femicide has not been.”<sup>153</sup> “The evidence of high rates of femicide in South Africa has not yet resulted in a reform of legislation to include a crime encompassing the gender-based motivations related to the murder of women. The South African Police investigations have not indicated any consideration is given into the history of intimate partner violence, a key factor that would increase chances of a conviction in cases of intimate gender-related killings. Police have not considered gender-based motivations.”<sup>154</sup>

The South African Statistical office believes that a reduction in the crime level in the country would result in a decline in the crime against women. This was based on statistical information

---

<sup>151</sup> African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003, Article 4(2)(b), available at: <https://www.achpr.org/legalinstruments/detail?id=37> [accessed 29 November 2019].

<sup>152</sup> Abrahams et al., “Intimate Partner Femicide in South Africa in 1999 and 2009.”

<sup>153</sup> Cynthia Ibale, “Classifying Women Murders in South Africa and Uganda as Femicide, Final Paper for Violence Against Women Course, Central European University.”

<sup>154</sup> Ibid.

showing that men were more victimized than women in many crimes including murder.<sup>155</sup> This conclusion is too simplistic and fails to take into account the gender-specific nature of this violence as well as the existence of normalization of violence against women. The report's findings mention that both women and men found it acceptable for a man to hit a woman if she argues with him.<sup>156</sup>

Whilst men remain are the highest victims, they also happen to constitute the majority of perpetrators of violence. Relying on the narrow definition of femicide “killing of females simply because they are females” the Statistics South Africa report states that femicide is a rare phenomenon in South Africa that is being misused by activists and the media. In the same vein, they do acknowledge that homicide as a result of domestic violence remains unacceptably high and therefore targeted interventions against crimes that victimize women are required.<sup>157</sup> Once again, they ignore the misogynistic attitudes that fuel this crime and in turn contradict themselves.

In *S v Baloyi and others*, the Constitutional Court of South Africa had the complex task of finding a balance between the State's constitutional duty to provide effective remedies against domestic violence and its simultaneous obligation to respect the constitutional rights to a fair

---

<sup>155</sup> Statistics South Africa, “Crime against Women in South Africa An In-Depth Analysis of the Victims of Crime Survey.”

<sup>156</sup> Statistics South Africa.

<sup>157</sup> Ibid.

trial of those affected by the measures.<sup>158</sup> The facts of the case are: the appellant, an army officer, was found to have breached an interdict ordering him not to assault his wife or prevent her or their child from entering or leaving their home.<sup>159</sup> He appealed to the High Court which found that placing the onus on him to disprove his guilt was unconstitutional. The case was then forwarded to the Constitutional Court for confirmation of the invalidity finding.

Delivering the unanimous decision, Justice Albie Sachs affirmed that “the Constitution and South Africa’s international obligations require effective measures to deal with the gross denial of human rights resulting from pervasive domestic violence.”<sup>160</sup> Justice Sachs highlighted that that systematic, pervasive and overwhelmingly gender-specific nature of domestic violence reflects and reinforces patriarchal domination in a particularly brutal form that compels constitutional concern. He further highlighted that section 12(2) of the South African Constitution provides for the right to freedom and security of the person including the right to be free from all forms of violence by private sources.<sup>161</sup> Based on section 12(2) and the State’s obligation to protect the right to be free from violence from private sources, South Africa has a direct obligation to address domestic violence. Justice Sachs further underscored that the non-sexist foundations of the South African Constitution and the guarantees of the right to equality

---

<sup>158</sup> *S v Baloyi and Others* (CCT29/99) [1999] ZACC 19; 2000 (1) BCLR 86; 2000 (2) SA 425 (CC) (3 December 1999) (n.d.).

<sup>159</sup> *S v Baloyi and Others*.

<sup>160</sup> *S v Baloyi and Others*.

<sup>161</sup> *The Constitution of the Republic of South Africa, 1996: As Adopted on 8 May 1996 and Amended on 11 October 1996 by the Constituent Assembly*, 2015.

and non-discrimination are undermined when spouse-batterers enjoy impunity.<sup>162</sup> An ineffective justice system in addressing domestic violence would only normalize as opposed to combatting it as is required by the constitutional protection.<sup>163</sup>

Research on crimes against women found that women in South Africa generally felt unsafe based on fear of crime. This fear has been found to impede the activities of women compared to men.<sup>164</sup> Women felt unsafe to walk in their neighborhoods alone or freely express their sexual orientation.<sup>165</sup> The general feeling of insecurity felt by women raises concerns as to whether the State has complied with its constitutional duty to protect and ensure respect of the right to freedom from violence.

South Africa's Domestic Violence Act is widely considered one of the more progressive examples of legislation to address the problem of domestic violence. The Act places several obligations on police to compel their response.<sup>166</sup> To complement this in 2012, the Civilian Secretariat of Police (CSP) was tasked with overseeing the South African Police Services (SAPS). The CSP monitors and evaluates the SAPS performance, including adherence to the Domestic Violence Act. However reports from oversight bodies including the South African

---

<sup>162</sup> *S v Baloyi and Others*.

<sup>163</sup> *Ibid*.

<sup>164</sup> Statistics South Africa, "Crime against Women in South Africa An In-Depth Analysis of the Victims of Crime Survey."

<sup>165</sup> Statistics South Africa.

<sup>166</sup> Lisa Vetten, "Domestic Violence in South Africa," Policy Brief (Institute for Security Studies, November 2014).

Parliament, Auditor-General and Independent Complaints Directorate noted that many stations failed to meet the standards set by the Domestic Violence Act. Several complaints lodged against the police indicated a failure to open criminal cases, failure to arrest the abuser, failures to seize dangerous weapons from the abuser. The Independent Complaints Director recommended disciplinary action in 82% of complaints referred to it but the police only instituted proceedings in 5.1% of the cases.<sup>167</sup>

South African researchers recommend for renewed commitment from the government to develop policy-driven prevention interventions to address the gender-related proportion of female homicide, as well as on the availability of reliable data to monitor trends.<sup>168</sup>

“South African civil society has engaged in several advocacy efforts to raise the Government’s attention and push for stronger reforms and commitments from the Government on ending gender-based violence. In 2018, the Government was presented with an ultimatum from gender activists about the state of impunity for gender-based violence.”<sup>169</sup>

In November 2018, a National Summit against Gender-Based Violence and Femicide was held in South Africa at the President’s initiative. The Summit was organized after gender activists delivered a list of 24 demands addressed to the President of South Africa demanding an end to

---

<sup>167</sup> Lisa Vetten.

<sup>168</sup> Abrahams et al., “Intimate Partner Femicide in South Africa in 1999 and 2009.”

<sup>169</sup> Cynthia Ibale, “Classifying Women Murders in South Africa and Uganda as Femicide, Final Paper for Violence Against Women Course, Central European University.”

impunity for gender-based violence.<sup>170</sup> These demands were delivered to the South African President on 1 August 2018 by activists under the umbrella of the #TotalShutdown amidst marches in “all nine provinces to express the indignation against the increasing levels of gender-based violence and femicide in the country, and the ineffective justice system over the past years.”<sup>171</sup> One of the outcomes of the summit was the immediate establishment of Interim Gender-based Violence and Femicide Committee, funded by the Government, whose mandate includes the developing of a National Action for gender-based violence and femicide.<sup>172</sup> On 11 February 2019, civil society organizations reiterated their demands for action against gender-based violence, calling on the President to honor his commitments and ensure the establishment of the multi-sectoral council.<sup>173</sup>

“A declaration endorsed by the President of South Africa seems promising and presents the activists with an important tool for pushing forward reforms. It remains to be seen if further efforts taken by the Government in developing and implementing the plan of action include

---

<sup>170</sup> #TheTotalShutdown, “Rise-Up Against Gender Based Violence: Summary: Memorandum of Demands,” no. 210 (August 1, 2018): 5; Cynthia Ibale, “Classifying Women Murders in South Africa and Uganda as Femicide, Final Paper for Violence Against Women Course, Central European University.”

<sup>171</sup> South African Government, “Declaration of the Presidential Summit Against Gender-Based Violence and Femicide | South African Government,” South African Government, November 2, 2018, <https://www.gov.za/speeches/declaration-presidential-summit-against-gender-based-violence-and-femicide-2-nov-2018-0000>; Cynthia Ibale, “Classifying Women Murders in South Africa and Uganda as Femicide, Final Paper for Violence Against Women Course, Central European University.”

<sup>172</sup> South African Government, “Declaration of the Presidential Summit Against Gender-Based Violence and Femicide | South African Government.”

<sup>173</sup> Centre for Human Rights, University of Pretoria, “Enough Talking about Gender-Based Violence: Now It Is Time for Action,” February 11, 2019, [http://www.chr.up.ac.za/images/centrenews/2019/files/2019\\_Press\\_Statement\\_Enough\\_talking\\_about\\_gender-based\\_violence\\_-\\_Now\\_it\\_is\\_time\\_for\\_action.pdf](http://www.chr.up.ac.za/images/centrenews/2019/files/2019_Press_Statement_Enough_talking_about_gender-based_violence_-_Now_it_is_time_for_action.pdf); Cynthia Ibale, “Classifying Women Murders in South Africa and Uganda as Femicide, Final Paper for Violence Against Women Course, Central European University.”

adopting a gender-sensitive approach to investigations aimed at addressing gender-related killings in South Africa.”<sup>174</sup>

### 3.3 Uganda

The classification of gender-related killings as femicide has not featured in public discourse in Uganda.

Between May-September 2017, over 20 women were gruesomely killed in Entebbe town, Wakiso district, in central Uganda, with twelve women showing signs of sexual assault and genital mutilation.<sup>175</sup> Every week or so, the media would report the murder of a woman in Wakiso, a quiet district that had not traditionally reported high volumes of homicide according to the annual Uganda Police’s Crime Report.<sup>176</sup> Soon after these incidents, the Minister of Internal Affairs presented an overview of the state authorities’ investigation into the deaths of 21 of the victims to Parliament classifying the method of killing to be strangulation in eighteen of the cases, with nine of the group found with sticks inserted into their vaginas. The cause of death of three of the victims was not mentioned, and no explanation was given for this omission. The

---

<sup>174</sup> Cynthia Ibale, “Classifying Women Murders in South Africa and Uganda as Femicide, Final Paper for Violence Against Women Course, Central European University.”

<sup>175</sup> Uganda Human Rights Commission, “The 20th Annual Report To The Parliament of the Republic of Uganda 2017”; INTERNATIONAL, *AMNESTY INTERNATIONAL REPORT 2017/2018*.

<sup>176</sup> Uganda Police Force, “Annual Crime Report 2017”; Cynthia Ibale, “Classifying Women Murders in South Africa and Uganda as Femicide, Final Paper for Violence Against Women Course, Central European University.”

Minister of Internal Affairs stated that the following diverse motives for the killings were established: domestic violence, land conflict, ritual practices, serial killer and criminal activity.<sup>177</sup>

The outcomes raise questions to the cursory nature of the investigations, most prominently for lack of acknowledgement of the gender of the victims. A female parliamentarian criticized the Minister's report for being simplistic. A noticeable omission from the Minister's report was domestic violence as a cause of the killings. In one case the Minister mentioned having strong evidence linking the murder to domestic violence but never mentioned this as a cause for the perpetuation of violence.<sup>178</sup>

The omission of gender and domestic violence as a motivation for the rapes and killings, including the mutilation of victims' sexual organs, neglects acknowledgement of the inherently misogynistic nature of the crimes, obfuscating the capacity of the police to launch an effective investigation.

The 2018 Uganda Police annual crime report noted an overall increase in homicides reported compared to 2017. However, the gender-disaggregated data indicates a slight decline in the number of female victims. For example in 2018, 154 female victims died as a result of domestic violence compared to 166 female victims in 2017.<sup>179</sup>

---

<sup>177</sup> The Parliament of the Republic of Uganda, "The Parliament of Uganda Hansard 7 September 2017.Doc."

<sup>178</sup> The Parliament of the Republic of Uganda.

<sup>179</sup> Uganda Police Force, Annual Crime Report- 2018, available at: <file:///C:/Users/HP/Documents/Readings%20for%20dissertation/Uganda/2018%20Crime%20report.pdf>

Similar to the South African situation, there is no crime of femicide in Ugandan legislation. Uganda's law does criminalize the intentional killing of a human being.<sup>180</sup> The 2010 Domestic Violence Act prohibits domestic violence in a domestic relationship by prescribing it as an offence. Upon conviction, one may be sentenced to up to two-year imprisonment or liable to pay a fine or both. Domestic violence is defined to include physical, sexual, emotional, verbal, psychological and economic abuse.<sup>181</sup> Article 212 of the 1995 Ugandan Constitution places the duty to protect life on the police. The police also have the obligation to prevent and detect crime.<sup>182</sup> Police are further required to work with the Public Prosecution office to investigate criminal activity and report back to the prosecutor expeditiously.<sup>183</sup> The Domestic Violence Act also places a duty on the police to investigate cases of violence under the Uganda Police Force, a special unit, the Criminal Investigations Department under which a department dedicated to investigating homicides is provided.

Information gathered in this study relies on statistics of women and girls murdered provided by annual crime reports issued by the Uganda Police Force. The reports usually provide a breakdown on various crimes including homicide. The report provides for various classifications of homicide including deaths by aggravated domestic violence. On close inspection of data provided one notes discrepancies in figures provided. An update on status of cases recorded

---

<sup>180</sup> Uganda: The Penal Code Act (Cap. 120), 1950 [Uganda], Article 188, 15 June 1950, available at: <https://www.refworld.org/docid/59ca2bf44.html> [accessed 26 November 2019]

<sup>181</sup> Uganda, Domestic Violence Act, 2010, 9 April 2010, articles 2 & 6, available at: <https://ulii.org/ug/legislation/act/2015/3-9> [accessed 26 November 2019]

<sup>182</sup> The Republic of Uganda, "CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995." (1995), [http://constitutionnet.org/sites/default/files/Constitution%201995%20as%20passed%20by%20the%20Constituent%20Assemblyocr.en\\_.pdf](http://constitutionnet.org/sites/default/files/Constitution%201995%20as%20passed%20by%20the%20Constituent%20Assemblyocr.en_.pdf).

<sup>183</sup> The Republic of Uganda.

indicates that at least 50% of the cases are still under investigation.<sup>184</sup> But there is no clear indication of what types of cases are pending and further explanations. The UNODC has noted data coverage in Africa has negatively impacted on proper analysis of the prevalence of homicides in the region. It was noted that “some countries have neither reliable criminal justice data on homicide nor accurate mortality statistics that can be used as an alternative.”<sup>185</sup>

The high rate of cases pending investigation may be attributed to the limited facilitation given to the police. Due to the poor facilitation, most police stations have resorted to demanding for money from complainants for free services.<sup>186</sup> The Committee on the Elimination of Discrimination against Women has expressed concerned about reports of corruption in Ugandan police stations.<sup>187</sup>

The Committee was further concerned that “the absence of a holistic approach to the prevention and elimination of all forms of violence against women and that such violence would appear to be socially legitimized and accompanied by a culture of silence and impunity.”<sup>188</sup>

The National Gender-Based Violence Database (NGBVD) was set up at the Government’s initiative to assist with responses to gender-based violence by collecting, storing and analyzing

---

<sup>184</sup> Op. cit. n.9.

<sup>185</sup> United Nations Office on Drugs and Crime, “UNDOC, Global Study on Homicide: Executive Summary.”

<sup>186</sup> Op. cit. n.7, pg. 60.

<sup>187</sup> Committee on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women: Uganda, CEDAW/C/UGA/CO/7, 5 November 2010.

<sup>188</sup> Ibid, para. 23.

incident data.<sup>189</sup> The current data recorded by the NGBVD does not include data on gender-related killings of women.<sup>190</sup> The inconsistencies with the publication of the police's annual crime report which happens to be a primary source of information on the murder rate in the country hinder efforts to assess the extent of the continued perpetuation of gender-related killings.<sup>191</sup>

As first responders to crime scenes, information gathered by police investigators during the initial stages of investigation can be crucial in tracking patterns of violence. Murders are usually not an isolated incident but may be indicative of continuum of violence as well as deeply rooted misogynistic attitude fueling the perpetuation of such violence.

### 3.4 Conclusion

From the above discussion, investigative authorities are yet to adopt a gender-sensitive approach to investigate murders of women especially in contexts where there is an observable pattern of violence against women. Authorities in all three states have not paid much attention to a gender-sensitive approach. It was assumed that authorities in Mexico would have made progress in this approach given the number of resources and engagement with inter-governmental bodies and human rights monitoring treaties to assist in investigations of these murders.

---

<sup>189</sup> Ministry of Gender, Labour & Social Development, Standard Operating Procedures for the National Gender Base Violence Database, April 2015, available at: <http://ngbvd.mglsd.go.ug/docs/3801STANDARD%20OPERATING%20PROCEDURES%20FOR%20THE%20NATIONAL%20GENDER%20BASED%20VIOLENCE%20DATABASE.pdf>, pg.1 [accessed 26 November 2019]

<sup>190</sup> The National Gender Based Violence Database (Uganda), available at: <http://ngbvd.mglsd.go.ug>.

<sup>191</sup> Uganda Human Rights Commission, 20th Annual Report 2017, available at: <http://www.uhrc.ug/reports>, pg. 61.

There is a need for further sensitization and awareness-raising on the realities of gender-motivated killings. Despite the adoption of various resolutions and declarations highlighting the issue of femicide and urging states to exercise due diligence during investigations, at this attention has not been effectively grasped at the national level. There is also a need for closer monitoring of the implementation of recommendations given to States especially where gender killings are rampant.

#### 4 Conclusion

The right to life provides for both negative and positive obligations on States to ensure its full enjoyment. The prohibition against arbitrary deprivation of life requires the State to adopt all appropriate measure to protect and ensure the enjoyment of this right. To ensure this right, States must exercise due diligence to protect the lives of individuals against deprivations caused by both state and non-state actors. A failure to exercise this duty may incur international responsibility for the State in question.

The investigations must prompt, effective and thorough, impartial, independent and transparent. It is also essential that this obligation is discharged in a non-discriminatory manner and good faith. Investigations by States are to be initiated ex officio and promptly. Investigations into potentially unlawful deaths should be aimed at promoting accountability and prevent impunity. A systematic failure to meet the obligation to investigate may result in impunity.

Despite the increasing attention given to killings of women, it appears that little has been done to change the situation on the ground. Human rights treaty bodies, both regionally and internationally have expressed concern over poor criminal responses to gender-related killings including delayed and ineffective investigations.

Femicide, as an extreme form of violence against women, nullifies the enjoyment of human rights by victims. Long-standing failure to protect rights and freedoms in case of violence is a matter of concern that all States should address. The Inter-American Court and the African Commission concur that due diligence obligations in investigating murders widen in scope in the context of gender-based violence. States would be required to pursue certain lines of inquiry to

analyze the systematic patterns surrounding a specific type of violations of human rights. Failure to do so can render the investigations ineffective and foster a culture of impunity.

States' responsibility to act with due diligence to protect the rights of women in the context of violence against women is largely lacking especially with respect to gender-related killings.

The Committee on CEDAW found that inaccuracies in the procedures to record and document killings of women undermine the proper investigation of cases. By comparison, the Inter-American Court the absence of lines of inquiry that took into account the context of violence against women reveal a failure to comply with ensuring the rights to life for the victims by conducting a conscientious and competent investigation.

The South African Constitutional Court found that the repetitive and private nature of domestic continued to transgress guarantees to the right to be free from violence

It is recommended that a holistic approach to preventing gender-related killings through investigations is adopted. As suggested by regional mechanisms, certain lines of inquiry analyzing gender-related killings can be adopted to improve the effectiveness of investigations.

Another suggestion is the establishment of independent oversight bodies to monitor investigations on gender-based killings and ensure compliance with state obligations to address all forms of gender-based violence and the elimination of discrimination. These oversight bodies can also coordinate the implementation of progressive judgments from domestic and international tribunals. Oversight from civil society would also assist in keeping track of

compliance of State positive obligations to eliminate all forms of violence. This can be done through shadow reporting to relevant international and regional human rights treaty bodies.

International scrutiny from human rights treaty monitoring bodies is needed to ensure States comply with their due diligence obligations otherwise systematic violations will continue to persist. To keep the attention of States, civil society and members of the public will need to make use of the available avenues for accountability including domestic courts to ensure progress.

There is a need to address the indifference of authorities when investigating killings as a result of domestic violence. Killings as a result of domestic violence constitute the final lethal act following a continuum of violence which can easily be addressed by a timely response from authorities. There is need for capacity building and awareness-raising among authorities tasked with investigation duties. Development of an investigative protocol tailored to address different forms of gender-based violence can be developed to guide investigations.

## 5 Bibliography

- Abdel-Monem, Tarik. “Opuz v. Turkey: Europe’s Landmark Judgment on Violence against Women,” n.d., 5.
- Abrahams, Naeemah, Shanaaz Mathews, Lorna J. Martin, Carl Lombard, and Rachel Jewkes. “Intimate Partner Femicide in South Africa in 1999 and 2009.” *PLOS Medicine* 10, no. 4 (April 2, 2013): e1001412. <https://doi.org/10.1371/journal.pmed.1001412>.
- Addadzi-Koom, Maame Efua. “‘He Beat Me, and the State Did Nothing about It’: An African Perspective on the Due Diligence Standard and State Responsibility for Domestic Violence in International Law.” *AFRICAN HUMAN RIGHTS LAW JOURNAL*, 2019, 29.
- African Commission on Human and Peoples’ Rights. Commission Nationale des Droits de l’Homme et des Libertés v Chad, Merits, Communication 74/92, 9th Annual Activity Report 1995, Oxford Reports on International Law [ORIL] (African Commission on Human and Peoples’ Rights 1995).
- . Communication No. 323/06 Egyptian Initiative for Personal Rights & INTERIGHTS v Egypt (African Commission on Human and Peoples’ Rights December 16, 2011).
- Amnesty International. “Mexico: Submission to the Committee on the Elimination of Discrimination Against Women.” Amnesty International, July 2018. [https://doi.org/10.1163/2210-7975\\_HRD-9211-20180209](https://doi.org/10.1163/2210-7975_HRD-9211-20180209).
- Case of McCann and others v. the United Kingdom, No. App. No(s) 18984/91 (European Court on Human Rights (Grand Chamber) September 27, 1995).
- Case of Opuz v Turkey (Judgment), No. (Application no. 33401/02) (European Court on Human Rights September 6, 2009).
- Centre for Human Rights, University of Pretoria. “Enough Talking about Gender-Based Violence: Now It Is Time for Action,” February 11, 2019. [http://www.chr.up.ac.za/images/centrenews/2019/files/2019\\_Press\\_Statement\\_Enough\\_talking\\_about\\_gender-based\\_violence\\_-\\_Now\\_it\\_is\\_time\\_for\\_action.pdf](http://www.chr.up.ac.za/images/centrenews/2019/files/2019_Press_Statement_Enough_talking_about_gender-based_violence_-_Now_it_is_time_for_action.pdf).
- Chevalier-Watts, J. “Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?” *European Journal of International Law* 21, no. 3 (August 1, 2010): 701–21. <https://doi.org/10.1093/ejil/chq045>.
- Christof Heyns and Thomas Probert. “Casting Fresh Light on the Supreme Right : The African Commission’s General Comment No. 3 on the Right to Life.” In *The Pursuit of a Brave New World in International Law: Essays in Honour of John Dugard*, edited by Tiyanjana Maluwa, Max Du Plessis, Dire Tladi, and John Dugard. Leiden Boston: Brill Nijhoff, 2017.

- Commission africaine des droits de l'homme et des peuples, and Gambia. *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4): Adopted during the 57th Ordinary Session of the African Commission on Human and Peoples' Rights Held from 4 to 18 November 2015 in Banjul, The Gambia.*, 2015.
- Committee on the Elimination of Discrimination. "Consideration of Reports Submitted by States Parties under Article 18 of the CEDAW, Combined Seventh and Eighth Periodic Report of States Parties: Mexico\*." Committee on the Elimination of Discrimination against Women, February 7, 2011. [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=MEX&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=MEX&Lang=EN).
- Committee on the Elimination of, and Discrimination against Women. "Concluding Observations of the Committee on the Elimination of Discrimination against Women: Mexico." Committee on the Elimination of Discrimination against Women, August 7, 2012.
- Committee on the Elimination of Discrimination Against Women. "Concluding Observations on the Ninth Periodic Report of Mexico," July 25, 2018.
- Committee on the Elimination of Discrimination, and against Women. "General Recommendation No. 35 on Gender-Based Violence against Women, Updating General Recommendation No. 19," July 26, 2017. <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.
- Committee on the Elimination of Discrimination against Women. "Report on Mexico Produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol to the Convention, and Reply from the Government of Mexico." Committee on the Elimination of Discrimination against Women, January 27, 2005. <https://www.refworld.org/docid/4a54bc0e1a.html>.
- Council of Europe. European Convention on Human Rights as amend. Accessed November 30, 2019. [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).
- Cynthia Ibale. "Classifying Women Murders in South Africa and Uganda as Femicide, Final Paper for Violence Against Women Course, Central European University," March 2019.
- Diane Orentlicher. "Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity," February 8, 2005. <https://undocs.org/pdf?symbol=en/E/CN.4/2005/102/Add.1>.
- "Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries - 2001." *State Responsibility*, n.d., 114.
- European Court of Human Rights. Case of Osman v. The United Kingdom, No. App No(s) 23452/94 (European Court of Human Rights October 28, 1998).

- Haldemann, Frank, Thomas Unger, Valentina Cadelo, and Geneva Academy of International Humanitarian Law and Human Rights, eds. *The United Nations Principles to Combat Impunity: A Commentary*. Oxford Commentaries on International Law. Oxford New York, NY: Oxford University Press, 2018.
- Hasselbacher, Lee. "State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection." *Northwestern Journal of International Human Rights* 8 (n.d.): 27.
- Inter-American Court of Human Rights. Case of González et al. ("Cotton Field") v. Mexico (Preliminary Objection, Merits, Reparations, and Costs) (Inter-American Court of Human Rights November 16, 2009).
- . Case of Velásquez-Rodríguez v. Honduras (Merits) (Inter-American Court of Human Rights July 29, 1988).
- INTERNATIONAL, AMNESTY. *AMNESTY INTERNATIONAL REPORT 2017/2018: The State of the World's Human Rights*. Place of publication not identified: AMNESTY INTERNATIONAL UK, 2018.
- Isabel Cholbi. "Femicide in Mexico: What Happens When the State Looks the Other Way." *Berkley Political Review*, April 17, 2019. <https://bpr.berkeley.edu/2019/04/17/femicide-in-mexico-what-happens-when-the-state-looks-the-other-way/>.
- ISSAfrica.org. "26th AU Summit: Women's Rights beyond Promises and Paper Tigers." ISS Africa, January 27, 2016. <https://issafrica.org/iss-today/26th-au-summit-womens-rights-beyond-promises-and-paper-tigers>.
- Kate Wilkinson. "Five Facts: Femicide in South Africa." *Africa Check*. Accessed January 15, 2020. <https://africacheck.org/reports/five-facts-femicide-in-south-africa/>.
- Lisa Vetten. "Domestic Violence in South Africa." Policy Brief. Institute for Security Studies, November 2014.
- Mr. S. Amos Wako. "Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. S. Amos Wako," January 31, 1983. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G83/106/80/PDF/G8310680.pdf?OpenElement>.
- Mzikenge, Danwood. "The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights." *Melbourne Journal of International Law* 5 (2004): 37.
- Office of the United Nations High Commissioner for Human Rights. "OHCHR | Violence against Women." Accessed January 14, 2020. <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/VAW.aspx>.

- . “Women’s Rights Are Human Rights.” United Nations Publication. United Nations Office on Human Rights, 2014. <https://www.ohchr.org/Documents/Publications/HR-PUB-14-2.pdf>.
- Organisation of African Unity. Refworld | African Charter on Human and Peoples’ Rights (“Banjul Charter”). Accessed November 30, 2019. <https://www.refworld.org/docid/3ae6b3630.html>.
- Organisation of American States. Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belem do Para”) (1994). <https://www.refworld.org/docid/3ae6b38b1c.html>.
- Organization of American States (OAS). American Convention on Human Rights, “Pact of San Jose” (1969). <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.
- PATH, MRC, WHO, InterCambios. “Conceptualizing Femicide in Strengthening Understanding Femicide: Using Research to Galvanize Action and Accountability.” In *D.E.H. Russell, Femicide: Politicizing the Killing of Females*, 2008. [https://path.azureedge.net/media/documents/GVR\\_femicide\\_rpt.pdf](https://path.azureedge.net/media/documents/GVR_femicide_rpt.pdf).
- Refugees, United Nations High Commissioner for. “Refworld | General Comment No. 31 [80], The Nature of the General Legal Obligation Imposed on States Parties to the Covenant.” Refworld. Accessed January 15, 2020. <https://www.refworld.org/docid/478b26ae2.html>.
- . “Refworld | Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences on the Due Diligence Standard as a Tool for the Elimination of Violence against Women.” Accessed November 30, 2019. <https://www.refworld.org/docid/45377afb0.html>.
- . “Refworld | Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo.” Accessed November 30, 2019. <https://www.refworld.org/docid/5008088f2.html>.
- . “Refworld | Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Rashida Manjoo A/HRC/20/16.” Accessed November 30, 2019. <https://www.refworld.org/docid/5008088f2.html>.
- . “Refworld | Taking Action against Gender-Related Killing of Women and Girls : Resolution / Adopted by the General Assembly.” Accessed November 30, 2019. <https://www.refworld.org/docid/532066034.html>.
- Regional Office for Central America OHCHR, High Commissioner for Human Rights (OHCHR), UN Women, and UNiTE to End Violence against Women. *Latin American Model Protocol for the Investigation of Gender-Related Killings of Women*. Accessed December 1, 2019. <https://www2.unwomen.org/->

/media/field%20office%20americas/documentos/publicaciones/latinamericanprotocolforinvestigationoffemicide.pdf?la=en&vs=1721.

Rosa-Linda Fregoso & Cynthia Bejarano (eds.). "Preface by Marcela Lagarde y de Los Rios." In *Preface by Marcela Lagarde y de Los Rios*. Duke University Press, 2010.

S v Baloyi and Others (CCT29/99) [1999] ZACC 19; 2000 (1) BCLR 86 ; 2000 (2) SA 425 (CC) (3 December 1999) (n.d.).

simonecusack. "Using the Inquiry Procedure to Ensure Gender Equality (Equality Now)." *Optional Protocol to CEDAW* (blog), August 19, 2012. <https://opcedaw.wordpress.com/2012/08/19/using-the-inquiry-procedure-to-ensure-equality-equality-now/>.

South African Government. "Declaration of the Presidential Summit Against Gender-Based Violence and Femicide | South African Government." South African Government, November 2, 2018. <https://www.gov.za/speeches/declaration-presidential-summit-against-gender-based-violence-and-femicide-2-nov-2018-0000>.

Statistics South Africa. "Crime against Women in South Africa An In-Depth Analysis of the Victims of Crime Survey Data 2018." Statistics South Africa, June 2018. <https://www.justice.gov.za/vg/femicide/docs/201806-CrimeStats.pdf>.

*The Constitution of the Republic of South Africa, 1996: As Adopted on 8 May 1996 and Amended on 11 October 1996 by the Constituent Assembly.*, 2015.

UN Women. "The Long Road to Justice, Prosecuting Femicide in Mexico," November 29, 2017. <https://www.unwomen.org/news/stories/2017/11/feature-prosecuting-femicide-in-mexico>.

The Parliament of the Republic of Uganda. "The Parliament of Uganda Hansard 7 September 2017.Doc," September 7, 2019. <https://www.parliament.go.ug/documents/1138/hansards-2017-september>.

The Republic of Uganda. CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995. (1995). [http://constitutionnet.org/sites/default/files/Constitution%201995%20as%20passed%20by%20the%20Constituent%20Assemblyocr.en\\_.pdf](http://constitutionnet.org/sites/default/files/Constitution%201995%20as%20passed%20by%20the%20Constituent%20Assemblyocr.en_.pdf).

#TheTotalShutdown. "Rise-Up Against Gender Based Violence: Summary: Memorandum of Demands," no. 210 (August 1, 2018): 5.

Uganda Human Rights Commission. "The 20th Annual Report To The Parliament of the Republic of Uganda 2017." Annual Report. Uganda Human Rights Commission, 2017. [www.uhrc.org/wp-content/uploads/2019/06/UHRC-20th-Annual-Report.pdf](http://www.uhrc.org/wp-content/uploads/2019/06/UHRC-20th-Annual-Report.pdf).

Uganda Police Force. "Annual Crime Report 2017." Annual Report. Uganda Police Force. Accessed December 2, 2019. <https://www.upf.go.ug/wp-content/uploads/2018/07/ANNUAL-CRIME-REPORT-2017.pdf>.

- UN Committee on the Elimination of Discrimination Against Women (CEDAW). “CEDAW General Recommendation No. 19: Violence against Women,” 1992. <https://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx>.
- UN General Assembly. “Action against Gender-Related Killing of Women and Girls: Report of the Secretary General.” UN General Assembly, June 16, 2015. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/V15/043/26/PDF/V1504326.pdf?OpenElement>.
- . “Declaration on the Elimination of Violence against Women, Proclaimed by General Assembly Resolution 48/104 of 20 December 1993.” UN General Assembly, December 20, 1993. <https://www.ohchr.org/Documents/ProfessionalInterest/eliminationvaw.pdf>.
- . International Covenant on Civil and Political Rights (1966). <https://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>.
- UN Human Rights Committee. “General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life.” UN Human Rights Committee, October 30, 2018. [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CPR/C/GC/36&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CPR/C/GC/36&Lang=en).
- . “UN Human Rights Committee (HRC), CCPR General Comment No. 6: Article 6 (Right to Life).” Accessed April 22, 2019. [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf).
- United Nations. “In-Depth Study on All Forms of Violence against Women: Report of the Secretary-General,” n.d. <https://www.refworld.org/docid/484e58702.html>.
- . *The Minnesota Protocol on the Investigation of Potentially Unlawful Death 2016: The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*. UN, 2018. <https://doi.org/10.18356/0389ae17-en>.
- United Nations High Commissioner for. “Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Dubravka Šimonović.” Koninklijke Brill NV. Accessed November 30, 2019. [https://doi.org/10.1163/2210-7975\\_HRD-3003-2015001](https://doi.org/10.1163/2210-7975_HRD-3003-2015001).
- United Nations Office on Drugs and Crime. “UNDOC, Global Study on Homicide: Executive Summary.” Study. Vienna: United Nations Office on Drugs and Crime, July 2019. <https://www.unodc.org/documents/data-and-analysis/gsh/Booklet1.pdf>.
- . “UNODC, Global Study on Homicide 2019: Gender-related Killing of Women and Girls.” Vienna: United Nations Office on Drugs and Crime, July 2019. [https://www.unodc.org/documents/data-and-analysis/gsh/Booklet\\_5.pdf](https://www.unodc.org/documents/data-and-analysis/gsh/Booklet_5.pdf).
- Velásquez Rodríguez v Honduras (Inter-American Court of Human Rights, July 29, 1988).

