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## **Human Security and Women's Human Rights: Reinforcing Protection in the Context of Violence Against Women**

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## ABSTRACT

*Considering the human security approach to critical risks and vulnerabilities, this paper explores violence against women as one of the most pervasive and widespread threats worldwide. While there is a general understanding that the human security analysis and the human rights legal framework intersect, so far the ways in which the two concepts can mutually reinforce each other has rarely been assessed. Thus, this paper looks more closely at the UN conception of human security in relation specifically to violence against women. It reflects critically on how a gendered human security would have to be shaped and studies its connection with human rights, covering the UN and regional normative landscapes and reviewing paradigmatic cases by the Inter-American and European Courts of Human Rights as exemplifying some of the potentials of the human security-human rights symbiosis. The concept of violence against women, strongly developed by international human rights law, has seldom been contemplated explicitly in human security concerns of violence. This text then examines the consequences of applying a human security lens to the legal analysis of violence against women and their human rights, and of including the human rights definition of violence against women within the human security sphere. In doing so, it spells out the added value of this dialogue and brings to light the synergies between human security and the human rights of women experiencing structural vulnerability in everyday life.*

# Human security and women's human rights: reinforcing protection in the context of violence against women

Dorothy Estrada-Tanck

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

UN Population Fund<sup>1</sup>

## 1. Introduction

It has become clear in recent years that women are often the worst victims of violence in times of conflict: they form the majority of civilian deaths; the majority of refugees; and are often the victims of cruel and degrading practices, such as rape and other forms of sexual violence.<sup>2</sup> However, women's basic well-being is also severely threatened in daily life by unequal access to resources, services, and opportunities, not to mention by the many forms of violence women experience under "ordinary circumstances." By making the security and basic well-being of persons its main concern, the concept of human security is able to capture this broader range of threats and risks and to highlight the need to address violence, whether interpersonal, inter-group, internal, or international, as well as systemic and extreme forms of deprivation and vulnerability. It is therefore not surprising that the appearance of the concept was celebrated as offering new lenses through which to understand the difficulties women and girls encounter in living a life free from fear and deprivation.<sup>3</sup>

Although there is a general understanding that a human security analysis and the human rights framework somehow intersect, the bodies of literature that deal with each have so far failed to adequately spell out specific ways in which the two concepts can mutually reinforce each other. They have also fallen short in examining how such reinforcement may contribute to the fight against the multiple forms of violence that women and girls experience. Thus, this paper wishes to stress the need to give the notion of human security a stronger human rights and gender component. At the same time, it seeks to flesh out ways in which the notion of human security can contribute to a more comprehensive understanding of the human rights of women and girls, as well as the set of State obligations that their protection requires. In reviewing paradigmatic cases by the European and Inter-American Courts of Human Rights, the paper then presents

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<sup>1</sup> UN Population Fund, 2005, quoted in Nedelsky, Jennifer, *Law's Relations: A Relational Theory of Self, Autonomy, and Law*, Oxford University Press, New York, 2011, p. 200.

<sup>2</sup> See the report *Global Burden of Armed Violence 2011*, specifically Chapter 4, "When the Victim is a Woman", Geneva Declaration Secretariat, Geneva, pp. 113-144.

<sup>3</sup> See Basch, Linda, "Human security, globalization, and feminist visions", in *Peace Review*, vol. 16, no. 1, March 2004, pp. 5-12; and O'Manique, Colleen, "The 'Securitization' of HIV/AIDS in Sub-Saharan Africa: A Critical Feminist Lens", in *A Decade of Human Security. Global Governance and New Multilateralisms*, edited by MacLean, Sandra J., David R. Black and Timothy M. Shaw, Ashgate, England/USA, 2006, pp. 161-176.

some proposals on how to advance fruitful synergies between human security and human rights, spelling out some of the benefits that this may entail for women and girls in general and for their right to live a life free from violence in particular.

## 2. Human security and its gender implications

Traditionally, the security of the State was commonly interpreted as protecting its territorial integrity and its sovereign powers, and the security of individual human beings, in particular that of women and girls, was largely ignored. The modern idea of human security emerged as a post-Cold War answer to threats that had been overlooked by State-centered conceptions of national, military, and territorial security,<sup>4</sup> as well as to new risks posed by the process of globalization and other transnational phenomena, intra-State violence, sudden economic downturns, environmental dangers, and global infectious diseases as HIV/AIDS, all of which create mutual and interlinked vulnerabilities for persons around the world.

In the face of these new realities, the contemporary idea of human security was first born in connection with development. It was initially referenced by the United Nations Security Council (UNSC) and the United Nations Secretary General (UNSG) in 1992, presented as an autonomous concept in 1993 by the United Nations Development Program (UNDP), and then fully articulated by Mahbub ul-Haq through the 1994 UNDP Annual Report (UNDP Report) on Human Development.<sup>5</sup> The concept coined in the UNDP Report was ambitious and sought to express in a comprehensive manner the possibility of multiple threats to individuals' and groups' basic well-being. Three aspects of the comprehensiveness of the concept as coined by that report are worth underscoring.

First and in the context of the 1993 Vienna Declaration, which affirmed the universality, indivisibility, and interdependence of human rights, the UNDP Report contributed to bridging the civil-political/socio-economic and cultural divide or hierarchy of rights and interests. It achieved this through following the original wording of the 1945 United Nations (UN) Charter, which expressed in its Preamble the Parties' commitment "to promote social progress and better standards of life in larger freedom," as well as the views of the founders of the UN that considered security as covering both *freedom from fear* and *freedom from want*. Given that after 1945, especially in the Cold War context, the international community had "tilted in favour" of addressing security matters in terms of freedom from fear, the UNDP recovered the initial UN values and considered that both types of freedoms are essential components of human security.<sup>6</sup> Thus, as defined by the UNDP in 1994, threats to human life also had to include those related to hunger, disease, and repression, and not only those related directly to international war or use of armed force.

Secondly, by focusing on the individual instead of the State, the UNDP Report's idea of human security unsettled conventions about what are considered "ordinary" and "extraordinary"

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<sup>4</sup> MacFarlane, Neil S. and Yuen Foong Khong, *Human Security and the UN. A Critical History*, Bloomington, Indiana University Press, United Nations Intellectual History Project, 2006, p. 20.

<sup>5</sup> UNDP, *Human Development Reports*, 1993 and 1994, at <http://hdr.undp.org/en/reports/>

<sup>6</sup> UNDP, *Human Development Report*, 1994, p. 24, at [http://hdr.undp.org/en/media/hdr\\_1994\\_en\\_chap2.pdf](http://hdr.undp.org/en/media/hdr_1994_en_chap2.pdf).

threatening events, ensuring that protection from sudden and hurtful disruptions in the patterns of daily life – whether in homes, in jobs, or in communities – would be given due consideration.<sup>7</sup> Indeed, the report explicitly highlighted the fact that “for most people, a feeling of insecurity arises more from worries about daily life than from the dread of a cataclysmic world event.”<sup>8</sup>

Finally, although in a less self-conscious manner, the UNDP Report identified threats of human security stemming not only from the disruption of people’s ordinary life but also from the affirmation of normalized violence and discrimination.

This multifaceted understanding of the notion of threats to human security accounts for the relative success of the notion among feminist scholars. Whereas classical security visions had focused on external military threats to the State, by looking at the individual, the human security concept opened the door for addressing the security concerns of both women and men equally, shedding light on the many forms of severe deprivation and violence that women encounter.

Sharing the main concern of this paper, some feminist authors have argued that gender approaches deliver more credence and substance to a wider security concept, but also enable a theoretical conceptualization more reflective of security concerns that emanate from the ‘bottom up’.<sup>9</sup> Indeed, feminist thinking has traditionally focused on the security of the individual rather than the State, defining security broadly as freeing individuals and groups, particularly women and girls, from the social, physical, economic, cultural, and political constraints that prevent them from living an autonomous life project. Accordingly, the notion of human security was welcomed as having a clear potential to act as a driving force for critical thought regarding mainstream security concerns and the way they had systematically overlooked women and girls, allowing critical security studies to be brought in line with feminist security studies.<sup>10</sup>

Although failing to give a comprehensive account of violence against women (VAW) and its impact in terms of human security, the 1994 UNDP Report explicitly raised the issue of the many ways in which women experienced high risks of becoming victims of violence just because of their gender.<sup>11</sup> Literally, “(i)n no society are women secure or treated equally to men. Personal insecurity shadows them from cradle to grave. [...] At school, they are the last to be educated. At work, they are the last to be hired and the first to be fired. And from childhood through adulthood, they are abused because of their gender”.<sup>12</sup> And while the UNDP Report recognized that women were making progress in the domain of education and employment, it also underlined that many shocking practices still contribute to women’s insecurity, including the widespread practice of genital mutilation, the custom of expecting women to be the last to eat in the household, and that of systematically disregarding health security issues related to childbirth.

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<sup>7</sup> Based on this definition, the Human Development Report of 1994 grouped the threats to human security in seven categories: 1. Economic security, 2. Food security, 3. Health security, 4. Environmental security, 5. Personal security, 6. Community security, 7. Political security. UNDP, *Human Development Report*, 1994, pp. 23-25.

<sup>8</sup> UNDP, *Human Development Report*, 1994, p. 1.

<sup>9</sup> See Hoogensen, Gunhild and Kirsti Stuvoy, “Gender, Resistance and Human Security”, in *Security Dialogue*, June 2006, vol. 37, no. 2, pp. 207-228.

<sup>10</sup> In this sense, see Florea Hudson, Natalie, *Gender, Human Security and the United Nations: Security language as a political framework for women*, Routledge, New York, 2010, p. 34.

<sup>11</sup> UNDP, *Human Development Report*, 1994, p. 22.

<sup>12</sup> *Ibid.*, p. 31.

In this last aspect, as the UNDP Report underscored, “a miracle of life often turns into a nightmare of death just because a society cannot spare the loose change to provide a birth attendant at the time of the greatest vulnerability and anxiety in a woman's life.”<sup>13</sup>

Another important milestone in the coining of the idea of human security was the 2003 report commissioned by the UN and carried out by the independent expert body, the Commission on Human Security (CHS): *Human Security Now* (CHS Report). In the CHS Report, State security and human security appeared as complementary, the latter focused on insecurities that had traditionally not been considered as State security threats.<sup>14</sup> Not unlike the UNDP Report, the CHS Report tried to capture the original UN spirit of viewing security comprehensively as including protection of both “freedom from fear” and “freedom from want.”<sup>15</sup> Indeed, the CHS Report referred to threats coming from violence, but – as it was explained – also from poverty, ill health, illiteracy, and other maladies; it highlighted the fact that conflict and deprivation are interconnected,<sup>16</sup> and it underlined abrupt change – as, for example, in a sudden economic downturn –, as a risk to security, rather than only absolute levels of deprivation.<sup>17</sup>

This conception of human security allowed the CHS Report to give due recognition to the multiple forms of threats to women’s basic well-being during violent conflict and its aftermath, including those with a disparate impact on some sectors of the population, such as refugees and internally displaced persons. The CHS Report made reference to many forms of gender-based violence, including rape, sexual violence, enforced prostitution, and trafficking, and also raised questions related to the economic security and social protection of women by underlining the importance of land security and highlighting the problem of gender disparity in education and literacy rates.<sup>18</sup>

In spite of this, the *Human Security Now* CHS Report has been subject to criticism for failing to address violence against women specifically, as well as for not paying attention to women as subjects or members of a constituency. This presumably resulted in issues that predominantly affect women, such as the complex set of questions surrounding women’s bodily integrity, especially with regard to reproductive health and violence, being side-lined. For instance, whereas the CHS Report does mention the harm to women’s physical integrity due to maternal mortality and malfunctioning of reproductive health systems,<sup>19</sup> it fails to relate this directly to general situations of violence against women or to analyze in depth the question of women’s reproductive autonomy. This failure to address violence against women specifically, Charlotte Bunch has argued, allowed the connection between violence against women and other kinds of

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<sup>13</sup> *Ibidem* and p. 28.

<sup>14</sup> Commission on Human Security, *Human Security Now*, Commission on Human Security, New York, 2003, pp. 1, 4 and 10.

<sup>15</sup> Considering the concept the 2003 Report asserts that “Human security means to protect the *vital core* of all human lives in ways that enhance human freedoms and human fulfilment. Human security means protecting fundamental freedoms—freedoms that are the essence of life. It means protecting people from *critical (severe) and pervasive (widespread) threats and situations*. It means using processes that build on people’s strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity.” *Ibid.*, p. 4.

<sup>16</sup> *Ibid.*, *Outline of the Report*, p. 1.

<sup>17</sup> *Ibid.*, Box 1.3 “Development, rights and human security”, p. 8.

<sup>18</sup> *Ibid.*, pp. 23, 25, 61, 65, 77,-79, 81, 107, 114 and 122.

<sup>19</sup> See *Ibid.* Box 6.2 “Ensuring human security for women: reproductive health”, p. 100.

domination and insecurity in the world to be masked. The ways in which a culture of violence at the domestic level furthers tolerance towards the violence of war, militarism, and other forms of domination that the CHS Report discusses are not given due visibility.<sup>20</sup>

This is why the idea of human security as simply a supplement to State security has also been problematized from a feminist perspective. Some argue that the notion of State security as traditionally coined (*i.e.* with an emphasis on military security) is not only too narrow but actually contrary to that of human security, especially if one considers the close links between gender and war and the way in which the current security system is rooted in patriarchal hierarchy. From this perspective, it has been said that “the present highly militarized global system of state security is not only incompatible with human security, but represents the foremost barrier to planetary security”.<sup>21</sup>

Against this ample background, the UN General Assembly (UNGA) considered human security as a “right” in the *2005 World Summit Outcome* and, deriving from that, discussed a “common understanding” of human security, which was later picked up in the *UN Secretary General’s Second Report on Human Security* (UNSG Report). The UNSG Report was presented to the UNGA in April of 2012, debated by this body in June of that year, and generally agreed upon in a resolution of October 2012. The “common understanding” adopted by the UNGA defines human security as “an approach to assist Member States in identifying and addressing widespread and cross-cutting challenges to the survival, livelihood, and dignity of their people” and considers that human security includes “the right of people to live in freedom and dignity, free from poverty and despair”, stressing that “[a]ll individuals, in particular vulnerable people, are entitled to freedom from fear and freedom from want, with an equal opportunity to enjoy all their rights and fully develop their human potential”.<sup>22</sup>

This paper defends the idea that all human rights – civil, political, economic, social, and cultural – should be considered within the human security conception, as supported by the UNGA’s most recent position, and only differentiated or prioritized according to identifiable and identified levels of risk and vulnerability on a context-specific basis. It is argued that if such levels of risk are identifiable, this translates into a legal obligation (primarily of the State) to in fact carry out a diagnosis to concretize the identification of those threats and the differentiated impact they may have on certain persons or groups in a vulnerable situation. In the case of already identified risks (through State or non-State sources) the legal obligation to address them and implement protection measures is even more evident and direct.

The notions of human security enshrined in the UNDP 1994 Report, the 2003 CHS Report, and the 2012 UNSG Report are still worth defending, especially in view of competing and narrower notions enshrined elsewhere that endorse a dichotomous approach to the “freedom from fear” and “freedom from want” dimensions of human security. That said, this paper argues that the

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<sup>20</sup> See Bunch, Charlotte, “A Feminist Human Rights Lens on Human Security,” in *Peace Review*, Vol. 16, No. 1, March 2004, pp. 29-34.

<sup>21</sup> See Reardon, Betty A. and Asha Hans (editors), *The Gender Imperative. Human Security vs State Security*, Routledge, New Delhi/United Kingdom, 2010, p. 3.

<sup>22</sup> UN General Assembly, A/Res/66/290 “Follow-up to paragraph 143 on human security of the 2005 World Summit Outcome”, 25 October 2012, para. 3 (*chapeau*); and para. 3a).



concept could be improved and surmount some of the expressed feminist criticism if it were able to duly take advantage of human rights standards and indicators. Such pointers can contribute in the definition and assessment of the levels of protection for human security in general, and for the human security of women in particular.

While the study of VAW has helped to acknowledge many cross-points – for instance, those between racism and sexism – human security may also bring forward the horizontal similarities of VAW worldwide. Because it contributes to breaking down the national and cultural differences and rather accentuates the shared features of the phenomenon of VAW as a form of discrimination against women – as has been recognized legally in General Recommendation No. 19 of the Committee on the Elimination of Discrimination against Women (CEDAW Committee) – human security thus sets VAW against the background of broader forms of communal violence, structural violence, and symbolic violence common in different degrees to all societies.

To try to remedy some of the dominant shortcomings in considering VAW, through bringing specific women's experiences to the fore, a gendered conception of human security may well represent a renovating force, both as an analytical framework and as a political project of emancipation.<sup>23</sup> This would seem to echo some of the human security concerns that have found their way into legal instruments, for example, the inclusion of a “right to food security” in the 2003 Maputo Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (article 15).<sup>24</sup>

This paper will thus focus on such expressions of human security in human rights legal provisions and judicial/quasi-judicial interpretations, and the connections between them, concretely relating to VAW. The text now moves to exemplify the way in which a gendered notion of human security and the human rights of women and girls can intersect and mutually reinforce each other by looking at two issues: first, the adequate conceptualization of VAW and its due recognition as a security concern; and second, the content and interpretation of the State's obligations regarding the human rights of women and girls in the context of systemic or structural vulnerability. It reveals a series of interpretative synergies operating between the two concepts of human security and human rights, specifically relating to women and girls. It also identifies limitations of this relationship and advocates for its potential for expanding the human rights agenda and improving the applicability of the human security/human rights intersection to alleviate real-life situations of extreme risk and vulnerability faced by women and girls.

### **3. Violence against women under international human rights law: expanding the human security agenda**

Some have pointed out that the idea of human security looks at a broad range of insecurities that individuals and communities face in the context of violence, embracing a broad notion of

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<sup>23</sup> See Hudson, Heidi, “‘Doing’ Security As Though Humans Matter: A Feminist Perspective on Gender and the Politics of Human Security”, in *Security Dialogue*, June 2005, vol. 36, no. 2, pp. 155-174.

<sup>24</sup> Adopted by the 2nd Ordinary Session of the Assembly of the Organization of the African Union in Maputo, 11 July 2003, entered into force on 25 November 2005, at <http://www.achpr.org/instruments/women-protocol/>

violence that encompasses interpersonal, intergroup, and international violence. Looking at gender relations through the lens of human security, rather than or in addition to a rights-based frame, may raise new questions or offer different strategic choices, some of which have recently been analyzed in academic settings.<sup>25</sup> One of these questions is the need to increase the awareness about the interrelationship between interpersonal violence and inter- or intra-state conflict, as the 2003 CHS Report rightly did.<sup>26</sup>

In addition, an increasing focus on the security of persons has inevitably contributed to shedding light on the manifold ways in which inter- and intra-state armed conflict affects the lives of women and girls. There are indeed promising signs that reflect a growing awareness about the need to incorporate women's needs and views in conflict and post-conflict situations. A paradigmatic example is Resolution 1325 issued by the UNSC in 2000, which focuses on the impact on women and girls in situations of armed conflict, as well as the need for gender mainstreaming in peacekeeping operations that duly addresses the needs and human rights of women and girls and the importance of their participation in conflict resolution and peacebuilding.<sup>27</sup> Worth mentioning is also Resolution 1820 of the UNSC, adopted in 2008, which underscores the urgent need to protect civilians, particularly women and girls, against widespread or systematic sexual violence in the context of armed conflict or post-conflict situations.<sup>28</sup> As a follow-up to Resolution 1820, the UNSC in 2009 passed Resolutions 1888 and 1889, relevant for their requirement for more detailed and systematic reporting to detect trends on sexual violence against women in conflict. Under these resolutions, monitoring should encompass economic, social, and cultural rights, as well as civil and political rights.<sup>29</sup> Assessments related to the first type of rights may provide insight into structural factors of discrimination that have been proven to constitute powerful generators of sexual violence against women.<sup>30</sup>

International civil society has also taken into account the idea of human security, specifically in promoting the right and duty of reparations for violations of women's and girls' rights in the context of armed conflict. The 2007 *Nairobi Declaration of the Right to Remedy and Reparation of Women's and Girls' Rights*, in bearing in mind

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<sup>25</sup> See "New Perspectives on Gender and Human Security Workshop" at the University of Wisconsin–Madison, carried out on March 19 and 20, 2010, at <http://genderhumansecurity.wordpress.com/>

<sup>26</sup> Commission of Human Security, *Human Security - Now, op. cit.*, p. 23. The Report explicitly states that "[i]n and immediately following conflict, crime rates soar. So do incidents of gender-based and sexual violence...The increases arise from the trauma of conflict and its impact on *interpersonal relations* and community networks, and from the broader issues of the breakdown of law and order...But the influence works both ways. High levels of *interpersonal violence* also appear to affect the likelihood for violent conflict...Increases in gender-based and sexual violence may mark a rise in poverty and the collapse of social safety nets. And although by itself interpersonal violence will not lead to conflict, combined with other factors it leads to a widespread sense of insecurity easily manipulated along identity lines."

<sup>27</sup> *Resolution 1325*, UNSC, S/Res/1325 (2000), adopted by the Security Council at its 4213th meeting, on 31 October 2000.

<sup>28</sup> *Resolution 1820*, UNSC, S/Res/1820 (2008), adopted by the Security Council at its 5916th meeting, on June 19, 2008.

<sup>29</sup> *Resolution 1888*, UNSC, S/Res/1888 (2009), adopted by the Security Council at its 6195th meeting, on 30 September 2009; and *Resolution 1889*, UNSC, S/Res/1889 (2009), adopted by the Security Council at its 6196th meeting, on 5 October 2009.

<sup>30</sup> See in this respect OSCE, Office for Democratic Institutions and Human Rights (ODIHR), *Gender and Early Warning Systems: An Introduction*, OSCE/ODIHR, 2009, p. 10.

the terrible destruction brought by armed conflict, including forced participation in armed conflict, to people's physical integrity, psychological and spiritual well-being, economic security, social status, social fabric, and the gender differentiated impact on the lives and livelihoods of women and girls,

includes explicitly in its declarative point No. 6 that

national governments bear primary responsibility to provide remedy and reparation within an *environment that guarantees safety and human security*, and that the international community shares responsibility in that process.<sup>31</sup>

Similarly, in the UN setting, human security has been taken up in addressing security policy affecting women in the context of armed conflict, as a useful tool that seems to reach further than just stressing the need for a human rights-based approach to security policy, calling for another formulation of "security" altogether. The UN Civil Society Advisory Group on Women, Peace, and Security (CSAG) was established in 2010 to advise the UNSG on ensuring a coherent and coordinated approach by UN agencies and entities to protecting women's rights during armed conflict and ensuring their full participation in all conflict prevention, peace-building, and post-conflict reconstruction processes. With the aim of implementing the substantial responsibilities of the international community under UNSC Resolutions 1325 and 1820 for preventing and responding to sexual violence against women displaced by armed conflict, it specifically recommended that

International and national policymakers *should fully consider issues of human security*, and in particular the potential impact of their security decisions on women, when formulating security policy. Most significantly, they should refrain from ill-advised and ineffective actions against insurgent groups if they are likely to result in massive retaliation against civilian populations, including killings, rapes, and large displacement of women and women-led households.<sup>32</sup>

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<sup>31</sup> The Declaration was issued at the International Meeting on Women's and Girls' Right to a Remedy and Reparation, held in Nairobi from 19 to 21 March 2007, by women's rights advocates and activists, as well as survivors of sexual violence in situations of conflict, from Africa, Asia, Europe, Central, North and South America, at [http://www.womensrightscoalition.org/site/reparation/signature\\_en.php](http://www.womensrightscoalition.org/site/reparation/signature_en.php). Emphasis added. The Nairobi Declaration was actually taken into account by the African Commission on Human and Peoples' Rights in its Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence; see ACHOR/Res. 111 (XXXXII) 07.

<sup>32</sup> International Crisis Group, "Working Paper on Preventing and Responding to Sexual Violence against Women Displaced by Conflict", by Donald Steinberg, 12 July 2010, Recommendation No. 14, available at <http://www.crisisgroup.org/en/publication-type/commentary/working-paper-on-preventing-and-responding-to-sexual-violence-against-women-displaced-by-conflict.aspx>. Emphasis added. A gendered human security approach that duly considers human rights law and standards, as the approach suggested in this paper, would have to integrate concrete human rights and humanitarian law criteria addressing gender-based violence, if dealing with human security in the context of armed conflict, for example, the *Guidelines for Gender-based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies*, developed and adopted by UNHCR and OCHA. As a dialogue that seems to be taking place already, but without explicitly acknowledging it, these guidelines in turn incorporate elements of human security: targeted sectors include protection, water and sanitation, *food security and nutrition* (including fuel for cooking), shelter and site planning, health and community services, and education, especially for girls, p. 12.

Indeed, the gendered dynamic of war and peace are increasingly understood as problem of security and a contributing factor to relapse into conflict. Nonetheless, more than a decade after the adoption of UN Security Council Resolution 1325 on Women, Peace and Security, women remain severely underrepresented in peace-building. While today there are general calls being made for the inclusion of women, women are still routinely excluded. A need remains to critically examine gender power relations that uphold the *status quo*, and investigate the process by which certain issues are put on the peace agenda and others not. Fortunately, recent efforts are being carried out in this domain, notably under the label “Equal Power-Lasting Peace.”<sup>33</sup>

Without doubt, armed conflict has a huge impact on women and girls and creates the scenario of widespread gender-based violence, particularly rape and other forms of sexual abuse.<sup>34</sup> However, as it has been emphasized in this research, various forms of pervasive violence against women also occur in contexts of “peace” (viewed under the State-centered logic) and may be the result of a continuum of gender-based violence involving structural discrimination and the violation of a wide set of interrelated human rights. For example, one may think of domestic violence, human trafficking of women and the way they experience (in)security in such settings,<sup>35</sup> or the violence arising from extreme poverty both in itself and in the different forms of violence it facilitates. This rings especially true if one takes into account the millions of avoidable deaths every year that derive from sources not directly related to armed force.<sup>36</sup>

Nevertheless, in their conceptualizations of “violent conflict” and “violence,” human security’s mainstream ideas and metrics adopt a restricted view confined to the utilization of armed force by the State or by any other actor(s) in the context of contentious issues.<sup>37</sup> In other words, those who focus on protecting the “freedom from fear” limit themselves to violence expressed in inter-

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<sup>33</sup> *Equal Power-Lasting Peace. Obstacles for women’s participation in peace processes*, The Kvinna till Kvinna Foundation, Sweden, 2012.

<sup>34</sup> Resolution 1325, United Nations Security Council, *op. cit.*, O.P. 10.

<sup>35</sup> Coomaraswamy, Radhika, “Human Security and Gender Violence”, in *Economic and Political Weekly*, Vol. 40, No. 44/45 (Oct. 29 - Nov. 4, 2005), pp. 4729-4736. The article also emphasizes the successful strategies in this field in South Asia achieved through women’s groups-government partnerships.

<sup>36</sup> In this line, see for example Roberts, David, *Global Governance and Biopolitics: Regulating Human Security*, Zed Books, London, 2010, pp. 13 and 16.

<sup>37</sup> See *Human Security Now*, *op. cit.*, in particular Chapters 2 “People caught up in violent conflict” and 4 “Recovering from violent conflict”, Box 2.1 “Conflict data are state-centred, not people-centred” at p. 22, which also highlights that estimates of the number of people killed as a result of violent conflict usually reflect only battle-related deaths, but many more die from the consequences of conflict—from the destruction of infrastructure, the collapse of essential health services and the lack of food, and emphasizes how those data are not available or included. See also documents published by the Human Security Report Project (HSRP): *Human Security Report 2005. War and Peace in the 21<sup>st</sup> Century*, 2005; and *Human Security Brief 2006*, Human Security Centre, University of British Columbia, Oxford University Press, Canada, 2005 and 2006, both of which refer to violent conflict, whether stemming from criminal or from political violence, as one that uses armed force; and *MiniAtlas on Human Security 2008*, Simon Fraser University-School for International Studies, The World Bank-Human Security Research Group, Notes on Terminology, p. 66, that specifically equates “violent conflict” to “armed conflict”, which is defined as “political violence between two parties involving armed force, and causing at least 25 reported battle-deaths a year”. However, the HSRP moved somewhat away from the narrow conception of violence in its *Human Security Report 2012: Sexual Violence, Education, and War: Beyond the Mainstream Narrative*, Human Security Press, Vancouver, 2012, which underlines the shortcomings of traditional conceptions of violence, and even of VAW as too often reduced only to sexual violence in dominant scholarship and measurement attempts.

or intra-state violence, and those who also emphasize “freedom from want” threats which do not necessarily involve armed force do not consider that certain forms of extreme and structural deprivations may amount to violence.

In doing so, it is argued, the dominant concepts of human security do not sufficiently take into account the evolution of how human rights law conceptualizes violence against women, an evolution which has gradually broadened the concept to include many forms of harm, including of physical, psychological, or sexual, but also harm economic in nature, in both the public and the private realms,<sup>38</sup> during times of both peace and armed conflict,<sup>39</sup> and as a form of discrimination.<sup>40</sup>

Indeed, conceptualizing VAW as a form of discrimination was a major step towards viewing it as a human rights violation and more broadly as a breach to equality. This outlook, advanced in the CEDAW Committee’s General Recommendation No. 19 in 1992, was based on that committee’s consideration of VAW as “acts that inflict physical, mental or sexual harm or suffering, *threats of such acts*, coercion and other deprivations of liberty.” It thus concluded that such violence constitutes a form of discrimination against women within Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>41</sup> Although the CEDAW itself does not present VAW as a form of discrimination, as Christine Chinkin has noted, through providing this interpretation, the CEDAW Committee creatively placed VAW within the realm of human rights, opening the door for its consideration as a State obligation. In an important realization in human security terms, she highlights how this “rights-based approach recognizes that women are entitled to be free from violence and the *fear of violence*, and that State parties have a legal obligation to ensure this right.”<sup>42</sup>

Mentioning for the first time economic injury as a form of gender violence, Article 1 of the 2003 Maputo Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa also defines violence against women and spells out corresponding State obligations, as

all acts perpetrated against women which cause or could cause them physical, sexual, psychological, and *economic harm*, including the threat to take such acts; or to undertake the imposition of arbitrary restrictions on or deprivation of

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<sup>38</sup> See art. 1 of the UN 1993 *Declaration on the Elimination of Violence Against Women*, UNGA, A/RES/48/104; arts. 1 and 3 of the 1994 Inter-American Convention of Belém do Pará and, more recently, art. 1 of the 2003 Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa.

<sup>39</sup> See art. 1 of the 2003 Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa.

<sup>40</sup> See, for instance, General Recommendation No. 19 of the Committee for the Elimination of Discrimination Against Women, 1992 (11th session, 1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>; and art. 6 of the 1994 Inter-American Convention of Belém do Pará.

<sup>41</sup> General Recommendation No. 19 of the UN Committee for the Elimination of Discrimination Against Women, 1992 (11th session, 1992), paras. 6 and 7, available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>. Emphasis added.

<sup>42</sup> Chinkin, Christine, “Violence Against Women”, in Freeman, Marsha, E., Christine Chinkin and Beate Rudolf (editors), *The UN Convention on the Elimination of all Forms of Discrimination Against Women: A Commentary*, Oxford University Press, 2012, p. 451. Emphasis added. See the fascinating historical and analytical account the author provides of the development of General Recommendation No. 19.

fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war.<sup>43</sup>

It is also not a coincidence that inter-governmental bodies such as the Organization for Security and Co-operation in Europe (OSCE), which is committed precisely to security and adopting a broad understanding of the idea, have recently emphasized the link between non-discrimination and gender equality in the socio-economic realm as a means of prevention of VAW. The OSCE calls Member States to

take measures to strengthen the *economic independence of women*, including ensuring *non-discriminatory* employment policies and practices, providing *equal access* to education and training, *equal remuneration* for equal work, *increased* work and educational opportunities, equal access to and control over economic resources with a view to *reducing women's vulnerability to all forms of violence*, including domestic violence and trafficking in human beings.<sup>44</sup>

Against this setting, the convergences between the human security debate and that of women, peace and security have been analyzed from a feminist perspective. At this crossroads, the gendered forms of insecurity in women's and girls' lives, the broader contexts of gender inequality and discrimination, and the structural patterns of indirect violence that facilitate them are revealed. Such an analysis renders evident the needs for a mutually reinforcing perspective that duly incorporates women and their views as a part of integral peace-building processes, as well as for these processes to tackle the structural violence at the root cause of women's human insecurity.<sup>45</sup>

On specifically legal conceptualizations of VAW, in 2011 the Council of Europe (CoE) promoted an integral view by adopting the Convention on Preventing and Combating Violence against Women and Domestic Violence (CoE Convention) (notably under the human security-related label "safe from fear, safe from violence").<sup>46</sup> The CoE Convention requires that measures be taken to prevent such violence and support victims while taking into account the needs of

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<sup>43</sup> Adopted by the 2nd Ordinary Session of the Assembly of the Organization of the African Union in Maputo, 11 July 2003, entered into force on 25 November 2005, at <http://www.achpr.org/instruments/women-protocol/>. Emphasis added.

<sup>44</sup> OSCE Ministerial Council Decision No. 15/05 Preventing and Combating Violence Against Women, MC.DEC/15/05, 6 December 2005, O.P. 6. Emphasis added.

<sup>45</sup> See McKay, Susan, "Women, Human Security, and Peace-building: A Feminist Analysis", Chapter 7, in IPSHU English Research Report Series No.19 *Conflict and Human Security: A Search for New Approaches of Peace-building*, 2004, pp. 152-175; see especially Table 1: Women's and Girls' Human Security During and After Armed Conflicts: Indirect and Direct Violence/ Unorganized and Organized Threat, at p. 160.

<sup>46</sup> Convention on Preventing and Combating Violence against Women and Domestic Violence, adopted by the Committee of Ministers of the CoE on 7 April, 2011 and opened for signature in Istanbul, Turkey, on May 11, 2011. The Convention will enter into force once 10 countries have ratified it, and 8 out of the 10 ratifications have to come from CoE member states. At the time of writing, the Convention has been signed by 24 States, but signed and ratified only by four: Turkey, Portugal, Albania and Montenegro, and thus, is not yet in force. This prompted the Parliamentary Assembly of the CoE to adopt a resolution promoting ratification by States and the consequent 'speed-up' of entry into force. See PACE, Resolution 1861, "Promoting the Council of Europe Convention on preventing and combating violence against women and domestic violence" (provisional edition), 2012, available at <http://assembly.coe.int/main.asp?link=http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta12/ERES1861.htm>

vulnerable persons.”<sup>47</sup> It also presents innovative features in the field of human rights and public policies, outlined in this paper as a potential avenue for addressing widespread vulnerabilities. Precisely because this is often the nature of VAW, apart from including the State obligation to adopt gender-sensitive policies “of equality between women and men and the empowerment of women” (article 6), it also includes a whole chapter on the obligation of States to implement “[i]ntegrated policies and data collection” to prevent and combat violence against women. Fortunately, other recent human rights instruments have taken up the interrelation between the right to non-discrimination and the enjoyment of other human rights by women,<sup>48</sup> although we are still far from a sufficiently well asserted notion of human security which includes the right to live free from all forms of violence.

#### **4. Human security and VAW: synergies reinforcing the human rights of women and girls**

In recent years, international human rights law has progressed significantly and has moved to affirm positive obligations of the State under the due diligence standard, now considered by some to be “emerging international customary law,”<sup>49</sup> including in matters which were traditionally considered part of the private domain, such as domestic violence, in particular, against women and girls. Already since the World Plan of Action adopted by the Conference of the International Women’s Year held in Mexico City in 1975, the need to address harms to the physical integrity of women has been signaled and the “Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace” was adopted in 1975.<sup>50</sup> The UN treaty on the subject of discrimination against women, CEDAW, was adopted in 1979 and came into force in 1981.<sup>51</sup> The CEDAW Committee, treaty body in charge of monitoring state compliance and interpreting the convention, adopted in 1992 its paradigmatic General Recommendation No. 19 on VAW and in 1993 the UNGA adopted the UN Declaration on the Elimination of Violence Against Women.<sup>52</sup> To start off with an illustrative example of the

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<sup>47</sup> See [http://www.coe.int/t/dghl/standardsetting/convention-violence/themes\\_migrant\\_women\\_en.asp](http://www.coe.int/t/dghl/standardsetting/convention-violence/themes_migrant_women_en.asp)

<sup>48</sup> See UN Committee Against Torture, General Comment No. 3, *Implementation of article 14 by States parties*, CAT/C/GC/3, 19 November 2012, paras. 32-34.

<sup>49</sup> In this sense see the conclusion of the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, in her report of 2006, *Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women. The Due Diligence Standard as a Tool for the Elimination of Violence Against Women* (para. 29), January 20, 2006, report prepared by Yakin Ertürk in accordance with Commission on Human Rights Resolution 2005/41; and Hasselbacher, Lee, “State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection”, *Northwestern University Journal of International Human Rights*, Volume 8, Issue 2 (Spring 2010), pp. 190-215, who analyses this standard as “emerging” international customary law, pp. 198-200, available at <http://www.law.northwestern.edu/journals/jihr/v8/n2/3>

<sup>50</sup> See the history analysed in Chinkin, Christine, “Violence Against Women”, in Freeman, Marsha, E., Christine Chinkin and Beate Rudolf (editors), *The UN Convention on the Elimination of all Forms of Discrimination Against Women: A Commentary*, *op. cit.*, p. 444.

<sup>51</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted 18 December 1979 by the UN General Assembly resolution 34/180 and entered into force on 3 September 1981.

<sup>52</sup> General Recommendation No. 19 of the UN Committee for the Elimination of Discrimination Against Women, 1992 (11th session, 1992), available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>; and UN 1993 *Declaration on the Elimination of Violence Against Women*, UNGA, A/RES/48/104.

practical application of this understanding, in *A.T. v. Hungary*, the CEDAW Committee in 2005 dealt with the case of a woman battered by her husband, who was not prosecuted by the State. The Committee held that even though the damage to her right to physical integrity was done by a private party, the State knew and did not act with due diligence; therefore, the State was held responsible.<sup>53</sup> Recent developments in human rights law such as this have contributed to adequately conceptualizing violence against women and girls as a State problem and a security concern.<sup>54</sup>

Much has been achieved since the adoption of the 1993 Vienna Declaration and Program of Action, cited above, and by the famous 1995 Beijing Declaration and Program of Action,<sup>55</sup> which both stressed the need to combat violence against women. The Beijing measures were predated not only by the adoption of the 1993 UN Declaration on the Elimination of Violence Against Women in the universal arena, as mentioned above, but also by the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) at the regional level.<sup>56</sup> International criminal law has also advanced a great deal in the legal understanding of some of the most brutal forms of sexual violence, affecting mainly – and in some cases, exclusively – women and girls, notably through the categorization as crimes against humanity of rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization in the 1998 Rome Statute of the International Criminal Court.<sup>57</sup>

As will be examined, both the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights (IACHR) have concluded that, in terms of international human rights law, the due diligence standard obligates States to prevent this type of violence and to take measures in order to protect women facing situations of violence.<sup>58</sup>

Indeed, both regional courts have applied due diligence standards in cases concerning violence

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<sup>53</sup> UN CEDAW Committee, *A.T. v. Hungary*, Communication no.: 2/2003, 26 January 2005.

<sup>54</sup> See Boerefijn, Ineke and Eva Naezer, “Emerging Human Rights Obligations for Non-State Actors”, in *Due Diligence and its Application to Protect Women from Violence*, edited by Carin Benninger-Budel, Martinus Nijhoff Publishers, The Netherlands, 2008, pp. 91-108.

<sup>55</sup> Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women: Action for Equality, Development and Peace, 15 September 1995, available at <http://www1.umn.edu/humanrts/instree/e5dplw.htm>

<sup>56</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), adopted on 9 June 1994 at the twenty fourth regular session of the General Assembly of the Organization of American States and entered into force on 5 March 1995.

<sup>57</sup> See article 7.1.g) of the Rome Statute of the International Criminal Court (ICC), adopted on July 17, 1998 and entered into force on July 1, 2002. These legal categorizations of certain forms of gender-based violence as crimes against humanity or war crimes had also been advanced by the jurisprudence of the two *ad hoc* International Criminal Tribunals for Ex-Yugoslavia and for Rwanda, and have been further developed by both tribunals and by the case-law of the ICC itself; see Fries, Lorena, “La Corte Penal Internacional y los avances en materia de justicia de género: una mirada retrospectiva”, in Birgin, Haydée and Natalia Gherardi (coordinators), *Reflexiones jurídicas desde la perspectiva de género*, Colección “Género, Derecho y Justicia” No. 7, Suprema Corte de Justicia de la Nación, México, 2010, pp. 211-238.

<sup>58</sup> Apart from the two cases of *Opuz v. Turkey* (ECHR) and *Cotton Field v. Mexico* (IACHR), which will be analysed in this text and which reaffirm those obligations, see the detailed analysis of the *obligation of prevention* carried out in the Concurring Opinion of Judge Diego Garcia-Sayán in relation to the Judgment of the Inter-American Court of Human Rights in the *Case of González et al. (“Cotton Field”) v. Mexico*, of November 16, 2009.



against women, be it domestic violence or broader forms of societal violence such as femicide. The substance of due diligence standards has developed since the late 1980s, mainly under Inter-American human rights law as a general criterion to evaluate State responsibility. These standards express the appropriate level of care and prevention measures that the State should take in order to protect and guarantee people's human rights from non-State actors, including the duty to investigate and punish violations by non-state actors and properly redress the victims.<sup>59</sup> Through applying the due diligence standards to cases of violence against women, these courts have duly fleshed out the structural dimensions of the problem and adjusted state obligations to reflect the situations of risk that women encounter, thereby endorsing what this text identifies as a "human security-sensitive approach" to the interpretation of women's and girls' human rights.

The due diligence obligations of States have also recently been reaffirmed by the CEDAW Committee in 2010 in its General Recommendation No. 28, *The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, which provides ways for States parties to implement domestically the substantive provisions of the CEDAW. The CEDAW Committee specifically clarified that Article 2 "also imposes a *due diligence obligation* on States parties to *prevent discrimination by private* actors. In some cases, a private actor's acts or *omission of acts* may be attributed to the state under international law." Consequently, the CEDAW Committee emphasizes that States parties are obliged to ensure that private actors do not engage in discrimination against women as defined in the CEDAW.<sup>60</sup>

At the same time, it is worth noting that the more general existing standards of State responsibility in international law would probably not allow for such a flexible or ambitious interpretation as the CEDAW Committee's in considering that omissions by private parties could amount to state responsibility.<sup>61</sup> The *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (Draft Articles) adopted in 2001 by the International Law Commission (ILC) indeed indicate that a State commits an internationally wrongful act when its conduct consisting of an action or omission meets two conditions: that it is attributable to the State under international law; and that it constitutes a breach of an international obligation of the State

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<sup>59</sup> See the seminal *Case of Velásquez Rodríguez v. Honduras* by the Inter-American Court of Human Rights, (Ser. C) No. 4, 172, Judgment of July 29, 1988, in which the Court dealt with an enforced disappearance alleged to have been carried out by official authorities. Under the argument that a widespread practice of enforced disappearances existed in Honduras at the time, and this could be adequately proved, the Court constructed an obligation of due diligence of the State and concluded there actually was enough evidence to derive international State responsibility for the violation of the right to liberty and personal security; see para. 169. It took this principle one step further than only looking at conducts by official authorities and was clear in concluding 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, not because of the act itself, but because of the *lack of due diligence to prevent* the violation or to *respond* to it as required by the Convention; para. 172 (emphasis added); see also paras. 173-175.

<sup>60</sup> General Recommendation No. 28, *The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GC/28, 16 December 2010, para. 13. Emphasis added.

<sup>61</sup> See International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Supplement No. 10, UN General Assembly A/56/10, November 2001. On a general discussion on the content of the Draft Articles, their status within international law and their impact in legal practice, see Crawford, James, "The ILC's Articles On Responsibility Of States For Internationally Wrongful Acts: A Retrospect", in *American Journal of International Law*, Vol. 96, pp. 874-890.

(article 2.a. and b.). In its characterization of conduct attributable to the State, the Draft Articles do not leave much space for evaluating private action by including basically State organs, persons or entities exercising governmental authority, or persons or groups “in fact acting on the instructions of, or under the direction or control of, [the] State in carrying out the conduct” (articles 3-10). This formulation requiring explicit State approval makes it virtually impossible to construct State responsibility arising from omissions by private actors when this explicit approval is not in place, as it often is not when dealing with VAW. A plausible alternative construction in line with the Draft Articles could be that a State is responsible under international law for its own omissions, as well as when conduct amounting to discrimination results from the action or inaction of private parties.

However, it seems that the phrasing of the CEDAW Committee’s interpretation in General Recommendation No. 28 is opening the possibility of asserting State responsibility for omissions of private parties “in some cases,” which could be defined and refined further, according to criteria and recent case law in this subject, as analyzed in this paper. Apart from the State responsibility deriving from the conduct of private parties concerning VAW as examined in this paper, one could think of other practical examples of the conditions foreseen by the CEDAW Committee: if there were an individual or social pattern of repeatedly not paying a woman/women for their domestic work in private households (conduct of omission) and the State had been advised of this situation or had reason to realize this was occurring (such that it knew or ought to have known) and did not take action, then this could translate into State responsibility for not having a regulatory inspection system in place<sup>62</sup> or for not carrying out adequate supervision in knowledge of the specific circumstances, thus breaching its international obligations (to allude to the second element of the ILC’s definition) to prevent such harm from continuing and to protect the already affected woman/women.

The acknowledgment of the impact of private actors on human rights has also increased in recent years, and international State responsibility has been adjudicated in case law and debated by scholarship, as discussed throughout this paper. Examples may be found as well in State responsibility for enforced disappearances by private (or undetermined) parties, as recognized by the IACHR since the late 1980s in *Velásquez Rodríguez v. Honduras*, referred to above, and now included since 2006 as a defined treaty obligation in the UN convention on the subject. The International Convention for the Protection of All Persons from Enforced Disappearance moves beyond *a priori* State authorization, instructions, direction, or control, as required by the non-binding Draft Articles, and foresees that a State may be responsible for enforced disappearances carried out “by persons or groups of persons acting with the authorization, support *or acquiescence* of the State” followed by its refusal to acknowledge such disappearance (article

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<sup>62</sup> For instance, in the field of ESC Rights closely touched by private party action, the European Committee of Social Rights was critical towards Portugal’s low number of inspectors dedicated to supervision of employers in guaranteeing implementation of the prohibition of child labour, as not taking all necessary steps to comply with its obligations under the European Social Charter; ECSR, *ICJ v. Portugal*, Complaint No.1/1998. See also Langford, Malcolm, “Judging resource availability”, in Squires, John, Malcolm Langford and Bret Thiele (editors), *The Road To A Remedy: Current Issues in the Litigation of Economic, Social and Cultural Rights*, Australian Human Rights Centre/The University of New South Wales in collaboration with Centre on Housing Rights and Evictions, Australia, 2005, pp. 89-110.

2).<sup>63</sup> In opening the door for international responsibility by reason of State acceptance or compliance even without explicit approval, this convention has adopted a more protective, person-centered stance. At the same time, it constitutes an international legal instrument that holds an acceptable record of consensus, considering it only entered into force in 2010.<sup>64</sup>

Ongoing debates on transnational corporations and human rights, on the responsibility of private military companies under international humanitarian and human rights law, and on the human rights responsibility of non-State actors more generally have taken the stage in recent years and demonstrate that the position of private parties in relation to international law and the links between private conduct (by action or omission) and international State responsibility are contested areas open for reflection.

In this context, let us also recall the enormous struggle to gain recognition of “private” violence against women as a human rights and State concern, and the protection from it as a legally binding State obligation, as has been recounted in detail by feminist authors.<sup>65</sup> With that, as well as the constantly evolving nature of the field, in mind, the 2001 Draft Articles should be updated and complemented with more gender-sensitive and protective interpretations that adequately promote and ensure women’s human rights, similar to those developed recently by regional and UN human rights mechanisms.

The field for discussion concerning the degree and scope of State responsibility for private party actions and omissions as related to women is open. Indeed, the UN Special Rapporteur on VAW has requested submissions from States and relevant stakeholders concerning the due diligence obligation and dedicated her 2013 report to this subject, as discussed below, thereby creating a path for meaningful debate for the future of human security and human rights of women and girls.

In any case, understanding VAW as a form of discrimination against women, the due diligence standard recognized by the CEDAW Committee’s General Recommendation No. 28 is a particularly relevant obligation for the cases involving violence by private actors. Indeed, VAW as a form of discrimination is also addressed by General Recommendation No. 28 in clarifying that “[g]ender-based violence may breach specific provisions of the Convention, *regardless of whether those provisions expressly mention violence*,” an illuminating realization when considering structural forms of discrimination against women, such as those related to socio-economic factors. The CEDAW Committee further underlines that “States parties have a *due*

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<sup>63</sup> International Convention for the Protection of All Persons from Enforced Disappearance, UNGA A/61/488, adopted on 20 December 2006 in New York and entered into force on 23 December 2010. Emphasis added.

<sup>64</sup> Adopted six years ago and entered into force only two years ago, the Convention has been signed by 95 states and ratified by 37 states, at the time of writing; see [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-16&chapter=4&lang=en#EndDecv](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en#EndDecv)

<sup>65</sup> See the account given by Hilary Charlesworth and Christine Chinkin using the example of VAW to discuss the difficulty of opening traditional and orthodox views concerning the (valid) sources of international law, in *The Boundaries of International Law. A Feminist Analysis*, Juris Publishing, Manchester University Press, 2000, pp. 70-79. See also a feminist critique of the previous Draft Articles of 1979-1980 in which the ILC similarly did not widen imputability or state responsibility to cover state compliance with maintaining in place social and legal systems that allowed for endemic violations of physical and mental integrity such as VAW, in Charlesworth, Hilary, Christine Chinkin and Shelley Wright, “Feminist Approaches to International Law”, in *The American Journal of International Law*, Vol. 85, No. 4, October 1991, at p. 629.

*diligence obligation* to prevent, investigate, prosecute and punish such acts of gender-based violence,”<sup>66</sup> which may then also include structural forms of institutional violence or economic harm, as also confirmed in the Maputo Protocol on Women in Africa, mentioned above.

In the following sections, this paper first explores the human security-sensitive approach through an in-depth analysis of two decisions of the last few years, one from the IACHR and one from the ECHR, and then spells out the doctrinal implications of this evolution.<sup>67</sup>

#### 4.1 ECHR and domestic violence

The ECHR decided *Opuz v. Turkey* in 2009, building on some of its previous decisions, notably *Bevacqua and S. v. Bulgaria*, decided in 2008. In this latter case, applicant Valentina Nickolaeva Bevacqua argued that Bulgarian government officials had violated her right to respect for private and family life – as guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) – by failing to take the necessary measures to provide an adequate legal framework that would protect her and her young son from the violent behavior of her former husband, a view which was upheld by the Court.<sup>68</sup> It is also worth mentioning the two cases of *Kontrovà v. Slovakia* and *Branko Tomašić and Others v. Croatia*, which together with *Bevacqua* form a triad of cases concerning domestic violence against women and their children, met by the State’s lack of due diligence.<sup>69</sup>

In the case under analysis, *Opuz v. Turkey*,<sup>70</sup> applicant Nahide Opuz had been subjected by her husband to different forms of physical and psychological mistreatment, including death threats, over a period of years. The husband had also directed death threats against her mother, whom he eventually shot dead. For years, the facts had been brought to the attention of State officials, but with no significant effect on the protection of Opuz and her mother. After the death of the applicant’s mother, the acts were not duly prosecuted and punished by the criminal justice system of the State.

The ECHR held the State responsible for failing to exercise due diligence to adequately protect women from domestic violence, spelling out some of the practical obligations that such protection requires. In particular, the ECHR highlighted the need for enforceable measures of protection and a legislative framework that enables criminal prosecutions of domestic violence in the public interest, rendering the withdrawal of charges by the private party irrelevant in the worst cases.<sup>71</sup> More concretely, the court adopted a view of domestic violence not as isolated

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<sup>66</sup> General Recommendation No. 28, *The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, *op. cit.*, para. 19. Emphasis added.

<sup>67</sup> For further analysis of both cases, see also Rubio-Marín, Ruth and Dorothy Estrada-Tanck, “Violence against women, human security and human rights of women and girls: reinforced obligations in the context of structural vulnerability”, in Tripp, Aili Mari, Myra Marx Ferree and Christina Ewig (editors), *Gender, Violence and Human Security: Critical Feminist Perspectives*, New York University Press, 2013, pp. 238-259.

<sup>68</sup> See ECHR, *Case of Bevacqua and S. v. Bulgaria*, App. No. 71127/01, June 12, 2008.

<sup>69</sup> *Kontrovà v. Slovakia*, Application no. 7510/4, Judgement of 31 May, 2007; and *Branko Tomašić and Others v. Croatia*, Application no. 46598/06, Judgement of 15 January, 2009.

<sup>70</sup> ECHR, *Case of Opuz v. Turkey*, App. No. 33401/02, June 9, 2009.

<sup>71</sup> *Ibid.*, paras. 145, 146 and 168.

incidents, but rather as part of a pattern amounting to a situation of risk, in view both of the recurrent events concerning the specific victims but also the generalized impunity around violence against women in the region where the victims lived. It recognized that a State's failure to exercise due diligence to protect women against domestic violence, when it "knows or ought to have known of the situation,"<sup>72</sup> breaches its positive obligation of taking "preventive operational measures."<sup>73</sup>

Thus, although the acts of violence had been carried out by a non-State actor, the applicant's husband, the ECHR found a State violation of the right to life of the applicant's mother and the right to physical and moral integrity of the applicant.<sup>74</sup> Tellingly, the decision also relied on CEDAW, the Inter-American Convention Belém do Pará, and reports from non-governmental organizations to examine and characterize the situation of violence against women, including domestic violence, in Turkey.<sup>75</sup> Based on the facts of the individual case and its analysis of the general context of discrimination against women, the ECHR concluded that the failure to exercise due diligence amounted to gender-based discrimination, violating women's right to non-discrimination as well as equal protection of the law (art. 14) in relation to the right to life (art. 2) and the right to physical and moral integrity (art.3) of the European Convention.<sup>76</sup> This decision represents the first time that the ECHR found a State violation of the right to non-discrimination in a case of domestic violence.

The ECHR has confirmed this basic doctrine of State responsibility for violence against women by non-State actors in later cases, such as *E.S. and Others v. Slovakia* of 2009; *Rantsev v. Cyprus and Russia*, *A. v. Croatia*, and *Hajudova v. Slovakia* of 2010; and *Valiuliene v. Lithuania* and *Eremia and Others v. the Republic of Moldova*, both of 2013.<sup>77</sup> Unfortunately, the "Opuz line" of cases was swept aside in the recent judgment of *A.A. and Others v. Sweden*,<sup>78</sup> which involved VAW against women from Yemen seeking asylum in Sweden, possibly giving leeway to the recent trend of increasingly restrictive immigration policy in Europe which often leaves

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<sup>72</sup> *Ibid.*, see para. 130. Emphasis added. The condition for the State to *know or ought to know* of a certain risk or threat as a parameter for international legal responsibility has also been used in other decisions by human rights bodies, for example, that of *Delgado Páez v Colombia* by the UN Human Rights Committee referred to in section II.2.2 above.

<sup>73</sup> *Case of Opuz v. Turkey*, *op. cit.*, see para. 148. Emphasis added.

<sup>74</sup> See articles 2 and article 3 –which includes the prohibition of torture– of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>75</sup> *Case of Opuz v. Turkey*, *op. cit.*, paras. 164, 185 and 186.

<sup>76</sup> *Ibid.*, paras. 200 and 201.

<sup>77</sup> *E.S. and Others v. Slovakia*, Appl. No. 8227/04, 15 September, 2009; *Rantsev v. Cyprus and Russia*, Appl. No. 25965/04, 7 January 2010; *A. v. Croatia* 2010, Appl. No. 55164/08, 14 October 2010; *Hajudova v. Slovakia*, Appl. No. 2660/03, 13 November, 2010; *Valiuliene v. Lithuania*, Appl. No. 33234/07, 26 March 2013; and *Eremia and Others v. the Republic of Moldova*, Appl. No. 3564/11, 28 May 2013.

<sup>78</sup> See *A.A. v Sweden*, Appl. No. 14499/09, 28 June 2012 (Final 28 September 2012); see the Dissenting Opinion of Judge Ann Power-Forde, who laments the retreat in this case from "the Opuz line" that she considered a positive development by the Court because of its recognition of gender based violence as a form of discrimination against women (which she possibly thought necessary as the Court was not following the same line as in *N. V. Sweden*, Appl. No. 23505/09, 20 July 2010 -an analogous case involving possible deportation of a woman to Afghanistan entailing risk of violence- in which Judge Power-Forde was also sitting). See also *Irene Wilson v. the United Kingdom*, Appl. No. 10601/0, 23 October 2012, involving domestic violence, a case which although declared inadmissible, contains an allusion by the Court of *Opuz* as the relevant standard for the State's obligation in giving attention to and investigating cases of such type of violence.

vulnerable persons without due protection.

## 4.2 IACHR and femicide

Turning to a different regional context, another good example of legal analysis drawing connections between the “building blocks” of human security and human rights is provided by the 2009 *Cotton Field v. Mexico* case resolved by the IACHR.<sup>79</sup> A more in-depth examination is warranted, given the great significance of this case not only in affirming women’s right to live free from violence but also their right to adequate reparations, including in aspects of structural vulnerability, and the court’s implicit recognition of links between these rights and the enjoyment of human security by women.<sup>80</sup>

The *Cotton Field* case was the first to reach the IACHR related to the abductions and killings of more than 300 women and girls by non-State actors since 1993 in Ciudad Juárez (Chihuahua, Mexico). These cases have come to be known as the “Ciudad Juárez Femicidios” because they represent a pattern of criminality targeting women and girls from 15 to 25 years old who were disappeared, usually subjected to sexual violence, and then killed, often having been tortured and mutilated. The *Cotton Field* decision dealt specifically with the abduction, sexual assault, and killing of a young woman, Claudia Ivette González (20 years old), and two girls, Esmeralda Herrera Monreal (15 years old) and Laura Berenice Ramos Monárrez (17 years old) by non-State actors in 2001, and the subsequent failure of the State to act with due diligence in the investigation, prosecution, and punishment of the perpetrators as well as its failure to treat in a dignified way the deceaseds’ next of kin. Important for this paper’s argument on the links of insecurity to socio-economic precariousness is the assessment that the three young women were of “humble origins.” The remains of the three victims were found in a cotton field, where another five female bodies were also discovered; hence the name of the case.<sup>81</sup>

The case is extremely revealing because the court based a significant part of its reasoning on the severe, systemic, and structural threats and conditions of vulnerability experienced by victims, factors that the idea of human security emphasizes. In assessing the conditions in Ciudad Juárez, the court was willing to rely on reports produced by international bodies and actors such as the CEDAW Committee; the UN Special Rapporteur on Violence Against Women, its Causes and its Consequences; the Inter-American Commission on Human Rights (Inter-American Commission); and even Amnesty International; as well as on those produced by the autonomous National Human Rights Commission and by different local NGOs.<sup>82</sup>

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<sup>79</sup> Inter-American Court of Human Rights, *Case of González et al. (“Cotton Field”) v. Mexico*, Judgment of November 16, 2009 (Preliminary Objection, Merits, Reparations, and Costs).

<sup>80</sup> See Rubio Marín, Ruth and Clara Sandoval, “Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the *Cotton Field* judgment”, in *Human Rights Quarterly*, vol. 33, 2011, pp. 1062-1091.

<sup>81</sup> *Cotton Field v. Mexico*, *op. cit.*, paras. 2; 165-168; 169-221.

<sup>82</sup> *Ibid.*, paras. 140 and subsequent. See specifically the report the CEDAW Committee had already produced some years before the case, in 2005, as a result of the inquiry procedure conducted in relation to Mexico on the basis of article 8 of the Optional Protocol to CEDAW, because of the grave and systematic violations to human rights of women occurring in the context of the abductions, rapes and murders of women in Ciudad Juárez, Chihuahua. See

Basing its decision on the legal parameters offered by the American Convention on Human Rights (the Pact of San José) as well as parts of the Belém do Pará Convention, the IACHR considered that the disappearances, killings, and subsequent mistreatment and neglect of family members violated several rights including the rights to life, personal integrity and liberty, the rights of the child, and access to justice and judicial protection.<sup>83</sup> Moreover, the court considered the killings and disappearances to be gender-based, thus amounting to a violation of the right not to be subjected to discrimination.<sup>84</sup> This was a result of both the fact that such crimes targeted women and girls specifically as well as the fact that they took place in the context of a culture where discrimination against women was prevalent.<sup>85</sup> The response of the Mexican authorities to these crimes was indeed plagued with irregularities, stereotypes, lack of adequate investigation, and impunity.<sup>86</sup>

In its legal analysis, the IACHR highlighted the obligations of the State deriving from the Inter-American Convention on Human Rights and the Convention Belém do Pará, placing due emphasis on the need to take positive measures of prevention as a means to fight against impunity.<sup>87</sup> Specifically,

The Tribunal reiterate[d] that the States should not merely abstain from violating rights, but must adopt *positive measures* to be determined based on the specific needs of protection of the subject of law, either because of his or her personal situation or because of the specific circumstances in which he or she finds himself.<sup>88</sup>

For the court, the determining factor in triggering the State obligation regarding prevention and attention to gender-based violence, including that committed by non-State actors, is whether the State “knows, or ought to know” of the situation. In this sense, the *Cotton Field* case builds on the line of analysis initiated in the Inter-American system with *Maria da Penha Maia Fernandes v. Brazil*, the first case of gender-based violence and State responsibility dealt with by the Inter-American Commission on Human Rights (IACoHR) in 2001. The case addressed the death of a woman whose husband beat her, shot her with the intention of killing her, and ultimately electrocuted her while she was bathing and still in recovery from the gunshot. There, the IACoHR declared the State of Brazil to hold responsibility and issued a series of

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also the Mexican Government’s response to the report, CEDAW/C/2005/OP.8/MEXICO, 27 January 2005, both available at [http://www2.ohchr.org/english/bodies/cedaw/inquiry\\_procedure.htm](http://www2.ohchr.org/english/bodies/cedaw/inquiry_procedure.htm)

<sup>83</sup> See Articles 4(1), 5(1), 5(2), and 7(1), as well as Article 19, Articles 8(1) and 25(1) of the American Convention on Human Rights (ACoHR); and Articles 7(b) and 7(c) of the Convention of Belém do Pará.

<sup>84</sup> See Article 1(1) of the ACoHR.

<sup>85</sup> IACHR, *Case of “Cotton Field” v. Mexico, op. cit.*, para. 144.

<sup>86</sup> *Ibid.*, para. 146.

<sup>87</sup> *Ibid.*, para 163.

<sup>88</sup> *Ibid.*, para. 243. Emphasis added. In particular the Court interpreted that Article 5 of the Inter-American Convention entailed the State’s duty to *prevent* and investigate possible acts of torture or other cruel, inhuman or degrading treatment (para. 246) and that Article 7(1) of the Convention [right to personal liberty and security] entailed the obligation of the State to *prevent* the liberty of the individual being violated by the actions of public officials and private third parties, and to investigate and punish the acts that violate the right (para. 247).

recommendations, including broad remedies aimed at combating systematic problems of violence against women.<sup>89</sup>

In the *Cotton Field* case, the IACHR focused on two separate moments as occasions that ought to have prompted heightened due diligence obligations for the State. The first was the moment in which the large-scale violations in the region were duly documented, making the State authorities clearly aware of the situation of structural vulnerability that women and girls encountered.<sup>90</sup> The second was the moment of the first hours after the abduction and disappearance of the woman and two girls, given that the State knew that they could be subjected to sexual violence and killed, both of which the State had a particularly strong obligation to prevent.<sup>91</sup>

The *Cotton Field* decision contains important insights as to how the State's understanding of the duty to investigate – and of what amounts to relevant evidence – may be affected by structural conditions. In particular, the IACHR stressed the types of measures that should be taken in order to collect evidence of sexual violence during an autopsy of a person who has been killed with violence, pointing out that when systematic human rights violations are taking place, the failure to consider such context during an investigation could jeopardize the investigation itself.<sup>92</sup> The court, taking into account the limited physical markings on the bodies of the victims, the pattern of criminal conduct in the killings of Ciudad Juárez, and the failure by Mexican authorities to comply with required protocols in gathering proper evidence, determined that although sexual violence had not been duly proven regarding the victims it could nevertheless be presumed.<sup>93</sup>

Far from limiting itself to a gender and human security-sensitive interpretation of the substantive and procedural aspects of the merits of the case, in the *Cotton Field* decision the IACHR made a praiseworthy and only timidly precedented<sup>94</sup> effort to carry through those sensitivities to the domain of reparations. In particular, the court explicitly endorsed the need to make sure that reparations were gender-sensitive, meaning that they bear in mind the different impact that violence has on men and on women,<sup>95</sup> as well as transformative:

[B]earing in mind the context of *structural discrimination* in which the facts of this case occurred, which was acknowledged by the State..., the *reparations* must be designed to change this situation, so that their effect is not only of restitution, but also of

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<sup>89</sup> IACoHR, *Maria da Penha Maia Fernandes v. Brazil*, Case 12,051, Report No. 54/01, Annual Report, OEA/Ser.L/V.II.111 Doc.20 rev, 2000.

<sup>90</sup> In interpreting the *duty of due diligence*, the Court was guided by article 7(c) of the Belém do Pará Convention, which orders the state “to prevent, investigate and impose penalties for violence against women” in connection with the Inter-American Convention. The Court considered that states have an obligation to establish an integral policy of prevention capable of adequately responding to the risk factors faced by women in Ciudad Juárez, strengthening the institutions in charge of addressing violence against women and setting up an adequate complaint mechanism; *Ibid.*, para. 258.

<sup>91</sup> *Ibid.*, para. 283.

<sup>92</sup> *Ibid.*, para. 366.

<sup>93</sup> *Ibid.*, para. 220.

<sup>94</sup> See IACHR, *Case of Miguel Castro Castro Prison v. Peru*, Merits, Reparations and Costs; Judgment of November 25, 2006, Series C, No. 160.

<sup>95</sup> *Cotton Field v. Mexico*, *op. cit.*, para. 451.



rectification...[R]e-establishment of the same structural context of violence and discrimination is not acceptable”.<sup>96</sup>

In other words, the IACHR held that when human rights violations express situations of risk that women systematically encounter, the State must address those situations of risk and the vulnerabilities they create in order to give victims due redress in the form of guarantees of non-repetition.

It is therefore not surprising to find, among the concrete reparations measures the court ordered, not only monetary compensation measures for both material and moral harm, physical and mental rehabilitation measures, and measures of symbolic recognition, but also measures aimed at modifying the structural conditions so as to ensure non-recurrence.<sup>97</sup> As a strong regional expression of the principles contained in the UN Basic Principles and Guidelines on Reparations adopted just a few years before,<sup>98</sup> the IACHR recognized that impunity generated suffering and hence non-material harm to the victims of the *Cotton Field* case,<sup>99</sup> and ordered Mexico to investigate, prosecute, and punish the perpetrators of the abduction, killing, and inhuman treatment of the women and girls, not only as a primary obligation under the Inter-American Convention on Human Rights but also as a reparation measure and as a guarantee of non-repetition. The court specifically indicated that sexual violence should be investigated in accordance with internationally sanctioned guidelines, such as those of the Istanbul and Minnesota Protocols.<sup>100</sup> The IACHR thus adopted a decided role in granting broad, detailed, and structurally directed reparations, as opposed to limiting itself to ordering merely monetary compensation, as is the tendency in the ECHR.<sup>101</sup>

Other important guarantees of non-repetition ordered by the IACHR in the *Cotton Field* case included the creation and updating of a national database with information of all missing women and girls and their genetic information<sup>102</sup> (a measure that could be important for the investigations of such abductions and identification of the bodies found), as well as the training of personnel directly or indirectly involved in the prevention, investigation, and prosecution of violence against women. The court indicated that such training should place emphasis on

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<sup>96</sup> *Ibid.*, para. 450. Emphasis added. For an analysis of this case in relation to the evolution of VAW in human rights law and the related obligations under CEDAW, see Chinkin, Christine, “Violence Against Women”, in Freeman, Marsha, E., Christine Chinkin and Beate Rudolf (editors), *The UN Convention on the Elimination of all Forms of Discrimination Against Women: A Commentary*, op. cit., pp. 455 and subsequent.

<sup>97</sup> *Cotton Field v. Mexico*, op. cit., see paras. 446-601.

<sup>98</sup> See *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted and proclaimed by UN General Assembly resolution 60/147, 16 December 2005.

<sup>99</sup> *Cotton Field v. Mexico*, op. cit., para. 454.

<sup>100</sup> *Ibid.*, paras. 497-502.

<sup>101</sup> For an analysis of the role of the IACHR regarding reparations as less deferential with the State party, and a comparison between its follow-up mechanism and that of the ECHR, see Huneeus, Alexandra, “Courts Resisting Courts: Lessons from the Inter-American Court's Struggle to Enforce Human Rights”, in *Cornell International Law Journal*, Vol. 44, 2011, pp. 501-528, and specifically on the *Cotton Field Case*, pp. 496 and 501.

<sup>102</sup> *Cotton Field v. Mexico*, op. cit., para. 512.

recognizing women's rights, engendering due diligence during different judicial proceedings, and overcoming social stereotypes.<sup>103</sup>

Indeed, the IACHR's role in embedding the due diligence duty as an international human rights obligation has been pivotal. In looking at the development of due diligence obligations, though, one must not leave aside the role of the Inter-American Commission. It is important to recall the crucial stand taken by that body in 2001, in the first case affirming State obligations such as these concerning violence against women in *Maria da Penha Maia Fernandes v. Brazil*, mentioned above. Attention should also be drawn to the fact that the Inter-American Commission has jurisdiction to review complaints against the United States (U.S.) based on the American Declaration of the Rights and Duties of Man (American Declaration) and to issue relevant remedies. This legal competence of the Inter-American Commission has recently displayed its potential in a case of violence against women. In assessing U.S. actions, the Inter-American Commission concluded in the 2011 case of *Jessica Lenahan (Gonzales) et al. v. United States* that the State had failed to act with due diligence to protect Jessica Lenahan and Leslie, Katheryn, and Rebecca Gonzales from domestic violence, which violated the State's obligation not to discriminate and to provide for equal protection before the law under Article II of the American Declaration. It also found State responsibility in the fact that the U.S. failed to undertake reasonable measures to prevent the death of Leslie, Katheryn, and Rebecca Gonzales in violation of their right to life under Article I of the American Declaration, in conjunction with their right to special protection as girlchildren under Article VII of that instrument. Finally, in a similar position to that of the IACHR in *Cotton Field*, the Inter-American Commission concluded that the State violated the right to judicial protection of Jessica Lenahan and her next-of-kin, enshrined in Article XVIII of the American Declaration.<sup>104</sup>

As a corollary, it should be noted that after the *Cotton Field* case, the IACHR resolved another two cases against Mexico, the *Inés Fernández Ortega* case and the *Valentina Rosendo Cantú* case, both in August 2010.<sup>105</sup> In these decisions, the court reaffirmed the due diligence standard regarding the protection of women's and girls' human rights. In *Rosendo Cantú*, which involved the alleged rape of an indigenous woman by military officials in Guerrero, the IACHR explicitly sustained that the due diligence standard translated into reinforced obligations of the State.<sup>106</sup>

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<sup>103</sup> *Ibid.*, paras. 451-452. Notice however, that the most far-reaching structural remedy asked by the victims was not granted by the Court only on procedural grounds. Thus, the Commission and the victims' representatives requested the Court to order Mexico to design and implement a coordinated and long-term public policy to guarantee that cases of violence against women would be prevented and investigated, the alleged perpetrators prosecuted and punished and the victims redressed; *Ibid.*, para. 475. Mexico argued that it already had such a policy in place, substantiating its claim with evidence of legal and policy measures taken between 2001 and 2009; *Ibid.*, paras. 476-477. The Court abstained from ordering the measures considering that the Commission and the victims' representatives had not provided the Court with sufficient arguments to prove that the measures adopted by Mexico did not amount to such a policy; *Ibid.*, para. 493.

<sup>104</sup> See IACoHR, *Jessica Lenahan (Gonzales) et al. v. United States*, Case 12.626, Report No. 80/11, OEA/Ser.L/V/II.142, 2011, para. 199.

<sup>105</sup> IACHR, *Inés Fernández Ortega and Others v. Mexico*, (Ser. C) No 215, 30 August 2010; and *Valentina Rosendo Cantú and other v. Mexico*, (Ser. C) No 216, 31 August 2010.

<sup>106</sup> *Rosendo Cantú v. Mexico*, *Ibid.*, paras. 175 and 182.

Unfortunately, it failed to continue its prior doctrine regarding gender-sensitive and transformative reparations.<sup>107</sup>

It is worth noticing the parallels between the human rights case law analyzed above and the set of concerns discussed in the literature around human security, so much so that one wonders whether this is pure coincidence or whether, instead, human rights and human security communities are exercising reciprocal influences on each other.<sup>108</sup>

In other words, doors are being opened for analysis and debate on the interpretative synergies that may arise between the concepts of human security and human rights. Particularly relevant regarding the cases discussed, it seems that the human security approach, in placing emphasis on severe threats, situations of risk, and structural vulnerabilities that individuals encounter as obstacles to the enjoyment of their most fundamental human rights, underscores some of the insufficiencies of the classical doctrine of individual human rights, while theoretically grounding some of the more interesting and expansive recent evolutions on human rights violations and State responsibility.

As the analyzed cases demonstrate, human rights law is evolving along these same lines, in a parallel and possibly interconnected way with the different uses and debates surrounding human security.<sup>109</sup> Regardless of whether this is intentional or explicit, both developments are synchronized in adopting a comprehensive view of human rights and human vulnerabilities – which, as this paper suggests, may be and should be usefully taken advantage of for the effective realization of the human rights of women and girls.

Change may indeed be in the air. In fact, a recent position by the UN on violence against women was adopted within the Human Rights Council in a 2010 resolution under the title “Accelerating efforts to eliminate all forms of violence against women: *ensuring due diligence in prevention*.” The resolution closely links human rights and personal security concepts, duly underscores the notion of risk and vulnerability linked to the structural and pervasive dimension of the problem, and highlights the State obligation to enhance preventive measures in every domain of women’s existence, as well as to fight against discrimination and to ensure the realization of all human rights by women and girls, including those of socio-economic nature, as key factors in preventing violence against them.<sup>110</sup>

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<sup>107</sup> In this sense, see Rubio Marín, Ruth and Clara Sandoval, “Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the *Cotton Field* judgment”, *op. cit.*, p. 1090.

<sup>108</sup> Regarding the relationship between (in)security and domestic violence, it is also interesting to note that the recent report by the Inter-American Commission on Human Rights on *Citizen Security and Human Rights*, dedicates a chapter precisely to gender-based violence, reviewing it from the perspective of *reinforced obligations of the State* in the area of violence against women pursuant to the Convention of Belém do Pará. See OEA/Ser.L/V/II, Doc. 57, 31 December 2009, Chapter IV., A., 4.

<sup>109</sup> A good example in this respect is the *amicus curiae* presented by Carla Ferstman, Director of Redress -one of the main NGOs in the issue of reparations for human rights’ violations- within the case of *Cotton Field v. Mexico*, *op. cit.*, see para. 14, footnote 21. Carla Ferstman is at the same time one of the editors of the book *Human Security and Non-Citizens. Law, Policy and International Affairs*, published a few months after this case, illustrating the possibilities of the “human rights community” in engaging in dialogue with new global concepts and creating synergies in favour of the advancement of both human security and human rights of women and girls.

<sup>110</sup> UNGA, Human Rights Council, Resolution A/HRC/RES/14/12. 30 June 2010 (adopted without a vote). Emphasis added. See in particular, P.P.5; P.P.9 and P.P. 10; and O.P. 6, O.P.10, and O.P. 11.

Similarly, the 2013 annual report of the UN Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Rashida Manjoo, to the UN Human Rights Council was devoted to a study on the “State responsibility for eliminating violence against women.” This analysis was carried out as a global study of the interpretation and implementation of the due diligence obligation by States,<sup>111</sup> and the report arrived at far-reaching conclusions. It seemed to overturn the question mark in this debate and replace it with a final period when it boldly affirmed that, as an exception to the general rules on State responsibility, in the issue of VAW

a State may incur responsibility where there is a failure to exercise due diligence to prevent or respond to certain acts *or omissions of non-State actors*... For due diligence to be satisfied, the formal framework established by the State must also be *effective in practice*.<sup>112</sup>

## **5. Some conclusions: a gendered human security and the right of women and girls to live free from violence**

Constructing human security from a strong gender- and human rights-based approach, as suggested in this paper, allows for highlighting and reinforcing State obligations in identified contexts and with regards to persons in situations of structural vulnerability, such as women and girls who are often subject to multiple forms of discrimination and violence. Indeed, being broad and person-centered, the idea of human security offers a door of entry to push forward a more comprehensive definition of violence that comprises not only armed means of force that threaten or harm physical integrity, but also other means of coercion and deprivation that cause various types of harm. At the same time, a gender-sensitive human security may contribute to highlighting the structural inequalities and discrimination that cause general conditions of vulnerabilities for women and girls at the collective level, a challenge that is hard to address when looking at the individual violations of human rights as isolated events.

In this sense, this paper submits that human security thus understood also provides criteria to assess the adequacy of measures taken by the State to protect the human security of women and girls, either at an individual or community level, in cases where the State knew or should have known of the severe threats or risk situations confronting them. This paper further contends that this understanding of human security also promotes a proactive rather than a reactive or defensive approach, as usually occurs in the analysis of individual cases of human rights violations.

Reviewing the mutual interconnections between human security and human rights, this paper has argued that international human rights law helps make visible the ways in which violence against women threatens and affects their human rights and general well-being. Accordingly, the human security concept should duly consider and make use of international human rights standards on the subject. Indeed, providing human security with a gender and human rights content is one of

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<sup>111</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, UNGA, A/HRC/23/49, 14 May 2013.

<sup>112</sup> *Ibid.*, p. 1. Emphasis added.

the possible ways to help give it a more precise scope, delineate its contours, and spell out State obligations in concrete cases involving persons in very wide-ranging conditions of vulnerability.

Inversely, the human security concept can also contribute to a “managed expansion” of international human rights law.<sup>113</sup> As the recent case law of the ECHR and IACHR has reaffirmed, there exists a causal link between State negligence and violations of the human rights of women and girls not only as individual victims, but also of women and girls in the society at large. In this sense, the focus that the human security concept places on risk situations would allow for explicitly identifying contexts that present systemic threats to women and girls. The express declaration of a risk situation would act as a “detonator,” activating and reinforcing human rights obligations of the State, especially to take preventive measures, address the causes of the violations of human rights that have already taken place, and grant reparations that compensate individuals for the harm they have suffered while also seeking to redress the generalized conditions that facilitated such violations. More systemically, a human security “red alarm” could act as a trigger for the design and implementation of public policies of prevention and attention to conditions of structural vulnerability confronted by women and girls, encouraging the State to comply with its obligations to respect, protect, and fulfill the human rights of women and girls under its jurisdiction.

Fleshing out the intersections between human security and human rights, this paper has suggested there are interpretative synergies that can generate a more comprehensive understanding of the human rights of women and girls as well as more effective guarantees of their protection from the severe threats they confront. These synergies, if used further and in a more self-conscious way, may enrich judicial and quasi-judicial interpretations on the content of human rights and State responsibility, including in the domain of reparations, and thereby inspire legal analysis on the structural conditions of vulnerability potentially or actually affecting the human rights of women and girls.

From the cases reviewed in this paper, it can also be concluded that the wider definition of violence against women established in international human rights law and incorporated into the human security notion should be taken into account not only in judicial interpretation, but also by the State and actors engaging in the construction of security norms and policies, as an issue worthy of concern in evaluating risks as well as in facing and reducing situations of vulnerability of persons.

At the same time, and closing the loop of this circle, the idea of human security itself, which emphasizes an expansive and inclusive view of risks and vulnerabilities, would gain conceptual precision by looking at international human rights law and framing its proposals and agenda in terms of rights and the interpretation of these rights provided by international human rights mechanisms. This may render the human security agenda one that is useful to foster not only a “rule of law” but also a “rule of rights” culture. In light of the grave vulnerabilities faced by women and girls and the serious human insecurity they confront, this would offer an especially timely tool to be used as a policy framework as well as an orienting concept to better identify vulnerabilities and open the path for more creative and integral legal analysis.

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<sup>113</sup> In this sense, see Edwards, Alice and Carla Ferstman (editors), *Human Security and Non-Citizens: Law, Policy and International Affairs*, Cambridge University Press, Cambridge, 2010, p. 9.

In these ways, a gender- and human rights-based approach to human security may serve as an engine for emancipation and a real challenging force to existing asymmetries in power and resources, deep injustices, and, fundamentally, serious gender inequalities that involve, allow, and provoke so many of the violations of the human rights of women and girls throughout the world today.