Gendered Violence: An Analysis of State Legal Accountability for Sexual and Gender-Based Violence Amongst Refugee Women

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GENDERED VIOLENCE

AN ANALYSIS OF STATE LEGAL ACCOUNTABILITY FOR SEXUAL AND GENDER-BASED VIOLENCE AMONGST REFUGEE WOMEN

by

Maria Sigalas

A master’s thesis submitted to the Graduate Faculty in Political Science in partial fulfillment of the requirements for the degree of Master of Arts, The City University of New York

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GENDERED VIOLENCE
AN ANALYSIS OF STATE LEGAL ACCOUNTABILITY FOR SEXUAL AND GENDER-BASED VIOLENCE AMONGST REFUGEE WOMEN
A Case Study

by

Maria Sigalas

This manuscript has been read and accepted for the Graduate Faculty in Political Science in satisfaction of the thesis requirement for the degree of Master of Arts.

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GENDERED VIOLENCE
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by
Maria Sigalas

Advisor: Professor George Andreopoulos

Sexual and gender-based violence is a rampant issue affecting women internationally. Its incidence is exacerbated by conflict and the disruption of social patterns caused by displacement. Refugee women are often at greater risk of violence, due to their transient status in their countries of refuge. There exist many challenges in the protection of refugee women. The erosion of the refugee regime through the securitization of displacement has led to the depiction of displaced populations as threats rather than populations in need of humanitarian assistance. Additionally, there remain systemic social and cultural barriers at both international and local levels based on patriarchal values and unequal treatment of women within society. States as the primary actors tasked with upholding international human rights and humanitarian standards, especially in regards to the rights of refugee populations, have continued to evade their protectionist obligations. The charge of protection has been taken up by non-state actors, such as UNHCR, who have taken a principal role in both ensuring rights are upheld through programs on the ground and by serving as promoters of protectionist norms in international fora.

This study analyzes existing law and norms regarding sexual and gender-based violence as they apply to refugee women. It seeks to understand if there has been spillover of laws protecting all women from violence to the safeguarding of protections for refugee women. The study does so through an analysis of treaty law, norms, and the actions of non-state actors in promulgating protections. Ten case studies are analyzed in-depth, to determine the applicability of law and norms in monitoring states’ preservation of rights. The study’s purpose is to increase understanding of existing legal resources supporting the prevention and punishment of violence, while discussing the gaps in protection that continue to leave women vulnerable to abuse. Further, this paper delves into the evolution of sexual and gender-based violence norms and potential areas of improvement in increasing protections for refugee women.
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Acronyms

ASEAN Association of Southeast Asian Nations
CAT Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment
CBO Community Based Organization
CEDAW Convention on the Elimination of All forms of Discrimination Against Women
ECHRR European Union Convention on Human Rights
ECtHR European Court of Human Rights
EXCOM Executive Committee of the High Commissioner for Refugees
HRC Human Rights Committee
ICC International Criminal Court
ICCPPR International Covenant on Civil and Political Rights
ICESCR International Covenant on Economic, Social, and Cultural Rights
IGO Inter-Governmental Organization
INGO International Non-Governmental Organization
MPR Popular Movement of the Revolution
NGO Non-Governmental Organization
OAS Organization of American States
SAARC South Asian Association for Regional Cooperation
SGBV Sexual and Gender Based Violence
TNC Transnational Corporation
UN United Nations
UNHCR United Nations High Commissioner for Refugees
A. Background

Sexual and Gender-Based Violence (SGBV) is one of the most rampant issues affecting women and girls internationally. SGBV is defined as, “violence that is directed against a person on the basis of gender or sex… It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”¹ Violence is an affront to individuals’ dignity, while also structural in its effects on the larger community. It is estimated that 35% of women and girls worldwide have experienced physical, sexual, and/or emotional violence from an intimate partner or non-partner in their lifetime. This figure is as high as 70% when considering intimate partner violence.² Violence often results in health concerns for survivors such as physical, sexual, and reproductive disorders after the incident of violence,³ while also permeating into survivors’ social, economic, and cultural lives. Survivors often face isolation, barring of access to resources, exploitation, stigmatization, and fear of accessing assistance or redress within their communities.⁴ At its core SGBV is a human rights and humanitarian concern, as it results in the violation of dignity and inhibits the full realization of rights. Former United Nations (UN) Secretary General Ban Ki Moon discussed the breadth of the issue in the UN’s Unite Campaign to end violence against women,

Violence against women and girls is a human rights violation, public health pandemic and serious obstacle to sustainable development. It imposes large-scale costs on families, communities and economies. The world cannot afford to pay this price.⁵

SGBV is rooted in unequal power distributions and is executed to exert dominance or enforce existing hierarchies between intimate partners, communities, and at an institutional level, by

humanitarian workers, states and non-state actors looking to assert their authority. Power is the capacity for individuals to make decisions in their own lives and affirm one’s status within society. The restriction of power imposes barriers to agency and prohibits choice. The control wielded by the perpetrators of SGBV results in a denial of basic rights for the victim and creates a cycle of abuse that carries on long-past the incidence of violence. SGBV is perpetrated by intimate partners, family, community members, service providers, strangers, non-state and state actors. The majority of SGBV is committed by individuals that are known to the victim, and thus use it to exercise their power in a personal setting. All genders can be victim to SGBV, however women and girls are disproportionately targeted due to their unequal status within society.

Protection from violence is a human rights and humanitarian concern as it encompasses physical, social, economic, and cultural security. States and non-state actors are thus obligated to ensure there are preventative and reactive measures in place for survivors of SGBV. There remain many challenges in safeguarding the proper protection of women and girls from SGBV. At the international level challenges to providing protection are inconsistency in the application of SGBV law, lack of state consensus on SGBV protection responsibility, shortage of specific international and national SGBV law, and lack of data on SGBV. While at the community level, challenges include: impunity for perpetrators of SGBV (intimate partners, strangers, and NGO staff alike); social power hierarchies; lack of community involvement in programming; and differing attitudes on what constitutes SGBV.

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8 Ibid. 12.
10 Ibid. 20
Conflict settings pose an increased risk for SGBV as power disparities are felt more acutely by those most vulnerable within communities. In conflict and displacement settings, traditional gender roles are disrupted, leading to changes in perceived social hierarchies. Men’s loss of social roles, societal upheaval, uncertainty, poverty, and frustration all contribute to the persistence of violence. Referee women and girls are thus more vulnerable to violence due to their social status in society and the altered power dynamics created during displacement. A study conducted by Hyder and Zarin Noor on Afghan refugee women in Pakistan describes the amplification of traditional patriarchal values by husbands and male family units due largely to economic stresses and competition over shared resources in joint living situations. As a result of this need for stricter familial control, the prevalence of SGBV increased for refugee women and girls.

Violence further threatens the framework of refugee assistance, as well as the resources available to these populations on the ground. According to UNHCR’s Guidelines on the Protection of Refugee Women,

Protection is at the heart of the responsibility that the international community bears towards refugees. Refugees as a group are doubly disadvantaged and thus vulnerable to actions that threaten their protection…Women and girls have special protection needs that reflect their gender: they need, for example, protection against manipulation, sexual and physical abuse and exploitation, and protection against sexual discrimination in the delivery of goods and services.

The international community, states, inter-governmental organizations (IGOs), international non-governmental organization (INGOs), non-governmental organizations (NGOs), and community based organizations (CBOs) that provide services to refugee populations, have all identified

SGBV as a core protection concern for women and girls; however there continue to be vast challenges in realizing full protections for this population. One concern is the lack of long-term data on the prevalence of SGBV amongst refugee women internationally. There have been several studies conducted on its pervasiveness amongst specific populations. Among Afghan refugee women in Pakistan figures estimate its incidence as high as 50%,\(^7\) while 39% of Somali women in Ethiopian camps reported having experienced SGBV.\(^8\) Similarly, 56.9% of Palestinian refugee women in Jordan reported SGBV\(^9\) and 7.95% of Burmese refugee women along the Thai-Burmese border reported having suffered from violence in 2015 alone.\(^10\) These figures are important in providing a snapshot of the prevalence of SGBV, but they do not provide a complete picture of the problem. Additional challenges in specifically protecting refugee women and girls from SGBV are, lack of community knowledge on what constitutes SGBV, fear of community isolation or retribution, an absence of institutionalized redress mechanisms, shortage of organizational capacity to provide services, and widespread underreporting of SGBV.\(^11\) Some of the most important factors inhibiting the full protection of refugee women and girls from SGBV are the lack of state legal involvement in enforcing protection and the erosion of the refugee regime.

In the period surrounding the creation of refugee protection legal instruments, refugees were depicted as apolitical victims of state insecurity, necessitating humanitarian action.\(^22\) This view changed in the 1980’s when the discourse surrounding refugees and displaced populations increasingly focused on the economic, social, and political impact of these populations. Since the

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end of the Cold War and following the attacks on September 11th, this focus has expanded to an analysis of displaced populations’ impact on state security. The refugee regime has undergone a shift from an issue of humanitarianism to a threat to national security, where norms of protection have been reconstructed as secondary to security concerns and depicted as a risk to state sovereignty. Crises in Rwanda and former Yugoslavia, as well as protracted crises in Somalia, Afghanistan, and Syria have increased states’ inward focus and politicized the plight of refugees. The altered view of refugees as both burden and threat was also reflected by IGOs, most notably by UNHCR. During this time period, UNHCR altered its discourse to align with states and recognized that security is a main issue for states and that measures must be taken to ensure that those seeking humanitarian protection are differentiated from criminal or violent elements.

The UN General Assembly’s 1997 Note on Protection specifically discusses militarization in refugee camps and political instability incited by displaced populations. Since this time, UNHCR has shifted its discourse from purely acknowledging refugees as potential threats to a dialogue centered on how states can ensure their increased securitization does not negatively effect those seeking humanitarian assistance. The organization collaborated with several counter-terrorism committees and working groups to discuss the intersection of asylum/ refugee policy with increased security measures. In its 2007 background paper to the Special Meeting of the Counter-Terrorism Committee, the organization emphasizes the need for states to refrain from policies that violate human rights obligations in protecting displaced populations.24 The paper emphasizes that certain state policies, such as more restrictive border policing, limited access to judicial review, and broad categorizations of risk often resulting in refoulement, have endangered the rights of displaced populations. In its background paper, UNHCR notes its concern about the growing discourse claiming the refugee regime as a harbor for terrorists and insurrectionists.25 The agency has reacted by reimagining its own discourse to reflect security concerns, thereby recommending methods by which the proper implementation of refugee law could assist both in states’ counter-terrorist measures and in preserving the protections for displaced populations.

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23 Executive Committee of the High Commissioner's Programme. "Note on International Protection." UN General Assembly. July 2, 1997. [http://www.refworld.org/type,UNHCRNOTES,,,3ae68d9310,0.html](http://www.refworld.org/type,UNHCRNOTES,,,3ae68d9310,0.html). Paragraphs 2 and 19
25 Ibid. Paragraph 12 (i-viii)
its attempt to bridge national security and respect for human rights obligations, UNHCR is attempting to argue against the further erosion of the refugee regime as long as certain standards are upheld.\textsuperscript{26} The UNHCR’s mandate makes it a unique actor in the realm of refugee protection. As a UN agency it is inextricably linked to states. The linkage of UNHCR to states means that the agency has had to evolve its own framing of refugee protections based on state perceptions of displacement. UNHCR is not an a-political agency, as it must remain relevant to states to ensure their continued support in protecting refugees. In international relations today, security is the primary concern. States will choose the protection of their citizenry over the full promotion of the rights of an outside population. The organization’s change of discourse is therefore a means of legitimizing the work of the agency through an increased focus on the securitization of the refugee regime.\textsuperscript{27} State violations of refugee norms and rights continue to be brushed aside and justified by national security arguments. Despite UNHCR’s claims otherwise, the increased securitization of borders has resulted in the erosion of the refugee regime and caused a decreased attentiveness to the protection of the basic human rights of this population.

The refugee regime has also suffered due to states’ focus on viewing refugee populations through an economic neo-liberal lens.\textsuperscript{28} Cost-benefit has thus become a primary concern, where a human’s worth is qualified by their economic viability and the cost of allowing them to seek refuge. Many countries have justified xenophobic policies on premise of the costs incurred for assisting outside populations. There has been a reorientation of the refugee regime to a more exclusionary discourse, depicting refugees as the “other” amongst the mainstream population. For this reason, protection for refugee women and girls from SGBV cannot be approached from a standpoint of their displaced status but must be approached from a more cosmopolitan perspective. Refugee and asylee populations are equal to all human beings and thus worthy of the same international protections guaranteed to all people. States are responsible in upholding their international and regional obligations for refugees as they would for their own citizens.

Accountability promotes the realization of basic rights for all people, especially the protection of women and girls from SGBV. It encourages the agency of women and girls by

\textsuperscript{26} Ibid., paragraph 13.
providing resources for redress and by safeguarding certain standards in admonishing violations. Amongst refugee populations, the role of states is extremely important in guaranteeing the appropriate resources and services are available to protect these populations. State cooperation is pivotal in the legal recognition of refugee rights, as well as in the assurance that IGOs, INGOs, and NGOs can properly serve displaced populations. At the heart of SGBV accountability lies an analysis of the mechanisms in place which promote state responsibility in the protection of women and girls. This study will therefore analyze existing international and regional legal frameworks that detail protection obligations for all women from SGBV as they spillover to the protection of refugee women and girls.

B. Theoretical Framework

According to international law, states are the main duty-holders in protecting refugee populations regardless of the populations’ nationality. Nevertheless, states have increasingly evaded their international responsibilities and failed to appropriately safeguard the rights of this population. IGOs and other non-state actors have endeavored to fill this void in upholding protections for displaced populations by becoming active vehicles in international policy making and by monitoring state adherence to these customs. Non-state actors and institutions are thus legitimate actors in their own right, working within the international protection system in the promotion of its standards and values. Some branches of international relations theory focus on state-centered, interest driven approaches to international interaction and cooperation, with overall lack of attention paid to non-state actors and institutions in the promotion of laws and norms. Realism argues that international legal constraints are weak, while those that exist are the outgrowth of powerful states’ attempt to promote their own interests. Although IGOs are legitimized through the support provided by states, they have increasingly developed their own operative and institutional goals, sometimes in conflict with states’ preferences. This study will build its theoretical foundation on schools of thought that recognize the agency of non-state

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actors as legitimate power wielders, with their own identities, organizational structures, and preferences.

Neoliberal institutionalism is based on the premise that institutions have agency in world politics. They can influence state behavior and play a pivotal role in propagating international norms, rules, and standards. Institutionalism brings structure and regularity to interactions, enabling institutions to coordinate state action in achieving certain aims.\(^{31}\) The theory utilizes central tenants of economic theory in arguing that hierarchies of operation lessen the disorganization of interaction amongst states.\(^{32}\) Institutions, such as IGOs and treaty monitoring mechanisms, are created by states to facilitate the organization of communications. Neoliberal institutionalism further delves into institutional design, mechanisms of propagating state interest/ideals, and the methods by which they effect international norms. A subset of institutionalism focusing on legalization/international law recognizes the agency of institutions and studies their ability to impose legal constraints on states.\(^{33}\) Legalization/international law theorists argue that the institutionalization of international law can occur at varying degrees based on three attributes: obligation, precision, and delegation. Obligation refers to the degree to which a state feels, “a rule or commitment in the sense that their behavior thereunder is subject to scrutiny under the general rules, procedures, and discourse of international law, and often of domestic law.”\(^{34}\) Precision refers to the clarity of the law in describing authorization, requirements for adherence and sanctions for non-adherence. Lastly, delegation is the granting to third parties the ability to implement, interpret, monitor and resolve disputes between parties.\(^{35}\) In the case of refugee protection, institutions such as UNHCR and judicial/non-judicial monitoring bodies are central agents in promoting protections for displaced populations.

Neoliberal institutionalism and legalism/international law do not fully recognize the legal

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\(^{32}\) Ibid. 205


\(^{35}\) Ibid. 401
importance of mechanisms outside codified law, deemphasizing the strength of customary rules in promoting SGBV protections.

Constructivism adds further depth to legalization theory by recognizing that the environment in which agents and law operate is given more meaning through its social context. By this argument, law does not only exist in formal treaties and conventions. Law is influenced by norms, patterns of behavior, and social context. This view of law analyzes custom as a driving force of state behavior in the creation of customary law, which emphasizes law as transformative, fluid, and constantly changing with the behaviors of states. Human rights law is used as the prime example of an area in which custom has influenced both the formal codified law, but also the interactions between states and non-state actors. Constructivism also emphasizes the process of social interaction and environment formation as identity forming for agents. Norms are not solely regulatory but they constitute agents’ identities, creating a system in which international actors and structures are constantly interacting and influencing one another. As we will see later in this analysis, there exist very few international treaties that specifically discuss states’ obligations in preventing and protecting against SGBV for refugee women, or women in general. The continued efforts of IGOs and NGOs, such as UNHCR, have aided in the creation of provisions that develop a minimum expectation for states in implementing SGBV protections. Barnett and Finnemore describe the progression of UNHCR from a limited organization created purely on state delegated authority, to a primary actor in the realm of refugee protection. Through its moral power as an impartial, humanitarian advocate for displaced populations and extensive experience in the field, it was able to assert a level of authority in the international community. The recognition that international relations relies on identity and social construction is furthered when considering the role that gender plays in constructing norms.

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37 Ibid. 750
38 Ibid. 747
40 Ibid. Pg. 328
When analyzing SGBV protections, it is vital to understand the role of feminist theory in both challenging exclusionary legal frameworks and advocating for the reinvention of law to reflect the realities of women internationally. Feminist theory is not a single body of thought, but a discourse comprised of several theories focused on the central tenant that international law should be viewed with a gender lens. The approach claims that existing legal frameworks have been constructed in the image of western, patriarchal values thus excluding women and reinforcing a system of structural abuse. Laws that claim universality and neutrality discount the underlying inequities that effect genders differently. Some feminist theorists would additionally argue that neutrality emphasizes an organizational structure modeled on male viewpoints as the standard for all to uphold. Charlesworth, Chinkin, and Wright pose that the normative structure of law reinforces the dichotomy between public and private, which in reality are interconnected. They argue that law focuses on rights as a transaction between states and public, economic actors which are exclusionary to women, who primarily operate in private spheres. In the context of refugee women’s rights, Oswin argues that feminist theories have conceded by depicting refugee women as monolithic and passive in order to have their voice heard in international fora. The author argues that this has had some positive effects in increasing the international community’s recognition of women, resulting in important progress over the past several decades. However, by focusing on increasing women’s access to existing protection mechanisms, feminist approaches have often ignored the structural barriers inherent in international law which derive from the inaccurate interpretation of refugee women’s rights. Acquisition of rights within a flawed system does not equate to long-term advancement for women. Feminist theorists therefore argue in favor of challenging the prejudices present in existing legal frameworks by infusing the prevailing discourse with the experiences of women. The approach advocates for the reimagining of rights and protections informed by a more realistic understanding of power hierarchies as they are effected by gender.

43 Charlesworth, Chinkin, and Wright, pg. 627
44 Ibid. Pg. 640
45 Oswin, pg. 348.
46 Ibid. pgs. 354-355
For the purposes of this study, neoliberal institutionalism is important in its recognition of the central role institutions play in regulating inter-state relations through their ability to bring structure and regularity to interactions. The theory promotes standards of state responsibility, without undermining the role state interest plays in guiding human rights and humanitarian based programs. Through the institutionalization of international law, relations amongst actors is organized in varying degrees by obligation, delegation, and precision. The interests of both state and non-state actors are further developed through constructivist approaches to law which recognize the social nature of the international system and the role norms and identity play in shaping preferences. Feminist theory acknowledges the underlying, male-centric flaw in existing laws which continue to erect boundaries to the full realization of women’s rights. In challenging the structural inequities present in legal and rights based frameworks, the theory poses a more inclusive perspective on reimagining accountability and SGBV protection. These theories together build upon the intersubjective understanding of appropriateness, allowing us to conceptualize interest outside unilateralism as something more broadly defined by the identity of actors.

C. Methodology

This study adopts a legal case study approach in understanding the SGBV protection environment for refugee women and girls. The use of case studies will be exercised to create a multidimensional understanding of the issue of SGBV legal accountability. The first level of analysis will examine the overarching legal context of SGBV protection for all women through an investigation of international and regional law and norms. This will involve the use of tools of treaty interpretation and a content analysis of legal texts to determine the legal standards of protection and their use in monitoring settings. The study will then analyze the spillover of SGBV protections for all women within refugee law and policy. The interaction of international and domestic law will be discussed in brevity, as an in-depth analysis of domestic law regarding SGBV would necessitate a much lengthier study.

The study will then analyze the evolving jurisprudence through content analysis of one-hundred admissible international and regional monitoring body cases focused on SGBV for women. This examination will depict the type of issues being addressed by international case law and the pervasiveness of certain judicial/non-judicial decisions in relation to SGBV claims. All the cases chosen for analysis were deemed admissible by their respective monitoring bodies and
had thus exhausted all domestic legal remedies prior to having been raised to international or regional mechanisms. Finally, there will be an in-depth analysis of ten cases that address SGBV protections for refugee and asylee women. This section will focus on case studies reviewed by judicial or non-judicial monitoring bodies, the context in which each decision was made, and the case’s implications for an overall understanding of state SGBV accountability.

- Case Study 1: Pauline Muzonzo Paku Kisoki v. Sweden (1996), Committee Against Torture
- Case Study 2: A.S. v. Sweden (2000), Committee Against Torture
- Case study 3: T.A. v. Sweden (2003), Committee Against Torture
- Case study 4: V.L. v. Switzerland (2006), Committee Against Torture
- Case study 5: C.T. and K.M. v. Sweden (2006), Committee Against Torture
- Case study 6: Diene Kaba v. Canada (2008), Human Rights Committee
- Case study 7: Jabari v. Turkey (2000), European Court of Human Rights
- Case study 8: N. v. Sweden (2010), European Court of Human Rights
- Case study 9: Seferovic v. Italy (2011), European Court of Human Rights

There are several issues in this methodology that must be addressed. The primary being that a case study approach does not lend itself to the creation of generalizable observations and insights that can be applied widely. An additional barrier to this research is the disparity of information regionally regarding SGBV protections in Asia and North Africa. Asia lacks an active regional body with a specific mandate to protect or uphold human rights standards. The Association of Southeast Asian Nations’ (ASEAN) Human Rights Declaration makes mention of issues pertaining to SGBV, but it lacks a monitoring and adjudication body.\(^4\) The South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking does address issues of SGBV more specifically, but it too lacks a monitoring body. Similarly, there are no human rights monitoring bodies for Middle Eastern states. The lack of Asian and Middle Eastern regional commissions is an important observation in the context of

this study as it is reflective of the weakness of international norms in these regions. Another issue that this methodology reveals is the challenge of presenting one’s case to international and regional courts. The process of raising concerns to these bodies can be both lengthy and costly, which may effect the number of cases raised against specific states. Access to monitoring bodies is also limited by their location. Oswin notes that international and regional resources to challenge gender based persecution are usually difficult for women to access based on their location and the refugee regimes’ increased strictness with population movements.\textsuperscript{48} Despite these concerns, there has been a steady increase in the number of cases brought to international and regional commissions with over 58% having been brought to monitoring bodies in the last 10 years alone.\textsuperscript{49} This could be indicative of an increase in the prevalence of sexual and gender-based violence, or, more likely, an increased awareness of regional and international law and decrease in barriers to presenting cases to these monitoring bodies. The following section of this thesis will focus on defining accountability and a method of outlining different types/sources of the concept.

\textbf{D. Accountability Mechanisms}

Accountability is a relational concept. It poses that certain actors can be held responsible to uphold a set of accepted standards by other actors. The former are subject to judgment by the latter as to whether they have fulfilled their respective duties, risking sanction if their responsibilities are not met.\textsuperscript{50} By this definition, the primary relationship of importance is between power-wielders and accountability holders, premised on the recognized legitimacy of both groups. Accountability is thus reactive; its mechanisms are most effective in judging an operation after it has been completed.\textsuperscript{51} This concept is vital in ensuring that actors implementing programs are operating in line with accepted standards and norms while also establishing sanctions for those who fail to act in this vein. Accountability attempts to remove those that have abused their power from operating within the system. In line with the theoretical framework previously outlined in this study, states and non-state actors are active agents that play the role of

\textsuperscript{48} Oswin, pg. 353  
\textsuperscript{49} See Figure 5: International and Regional Court Cases on Sexual and Gender Based Violence 1979-2015  
\textsuperscript{51} Ibid. pg 30
power-wielders or are subject to judgment by accountability holders. State and non-state accountability is fundamental to the protection of refugee women and girls from SGBV as it pressurizes actors to abide by established custom related to the universal applicability of human rights standards.52

According to Keohane and Grant, traditional democratic state accountability can be divided into two models: participation and delegation. In the participation model, power derives from those affected by the power wielders’ actions, i.e., the populace. The delegation model involves the awarding of power from those entrusting actors with their power. 53 In this study, states are the primary power-wielders. They are the main actor in ensuring prevention, prosecution, and proper service provision for those affected by SGBV. The model of accountability is made more complex when considering the role of non-state actors in world politics. IO’s and monitoring mechanisms have their power delegated to them by states, meaning that states have traditionally controlled organizational leadership, funding streams, and dispute settlement mechanisms within these bodies. State delegatory power has increasingly been challenged by organizations’ participatory goals rooted in the empowerment and service of local populations. With the growth of IOs, NGOs, and judicial/non-judicial monitoring bodies the traditionally delegatory nature of international law has become more open to participatory models of accountability. These agents have become more transnational, open to the complaints of individuals and civil society actors,54 and serve the essential role of promoters of norms in world politics. 55 Relationships in international fora therefore exhibit a more fused version of delegatory and participatory accountability. As neither of these models is singularly complete in depicting the relationship of accountability for the protection of refugee women and girls from


55 Ibid. pg. 33
SGBV, we must focus on concerns related to the standards actors are held to and the mechanisms advancing power wielder accountability. 56

Keohane and Grant address the first concern by citing sources of legitimacy. Protecting refugee women and girls from sexual and gender-based violence poses a unique issue when determining legitimacy. Inherent to the concepts of both legitimacy and accountability is the logic of appropriateness, or normative standard by which actors are expected to abide. In the case of refugee protections, international and regional human rights laws and norms are the baseline standard all actors should uphold. States are not alone in the responsibility to abide by these standards; jus cogens norms apply to all actors in the global community, including non-state actors. Non-state actors, such as UNHCR, are principal agents in supporting the rights of displaced populations through their proliferation of established norms as well as their promotion of the restructuring of protection frameworks to encourage universal adherence to protection standards. With states as the legitimate accountability holders, we must determine methods of enforcing these obligations. Legitimate enforcers are dependent on the type of accountability being analyzed. Keohane and Grant have developed seven specific mechanisms of enforcing accountability: hierarchical, supervisory, fiscal, legal, market, peer, and public reputation. Hierarchical accountability refers to the relationship between superiors and subordinates, most commonly within bureaucratic organizations. In this mechanism, those in subordinate positions are accountable to those in positions of leadership.57 The supervisory mechanism relies on the principal-agent relationship in which the agent is delegated responsibilities by the principal and is thus answerable to these authorities.58 It is most common amongst IGOs that are subject to the supervision of the states that create these organization. Fiscal accountability allows funding agencies to check on the actions of those they fund.59 Legal accountability relates to agents’ requirement to abide by formal law and norms, reporting to those enforcing law.60 Market accountability is the responsibility to consumers and shareholders, most commonly effecting TNCs.61 Peer accountability is a form of reputational judgment between actors within the same

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58 Ibid, pg. 36
59 Ibid. pg. 36
60 Ibid. pg. 36
61 Ibid. pg. 37
sector, while the public reputational mechanism is reminiscent of soft power. It is present in all other forms of accountability and applies in situations in which the perception of an actor’s behavior can influence and effect their decision-making.  

This study will focus on the legal mechanisms in place holding states accountable for sexual and gender-based violence towards refugee women and girls. Legal accountability has developed from an internal mechanism to include international/regional dispute mechanisms serving as monitors of state behavior. International law is created and upheld by states sometimes leading to contradictory motives in its implementation. There will be an analysis of formal codified law and the normative frameworks surrounding sexual and gender based violence protection; where applicable, repercussions or sanctions for abuse will also be described. The following section will delve into the international and regional legal mechanisms effecting accountability.

II. International and Regional Law

Violence against women is a global issue. It is universal, in that it is not specific to any culture nor is it confined within state boundaries. Most states have historically been inattentive to women and girls’ protection needs. In most human rights treaties and conventions, there is no specific mention of sexual and gender-based violence in the primary document. Protections from these categories of violence often come as secondary, non-binding clarifications or interpretations of the laws listed therein. Human rights rhetoric has predominantly focused on civil and political rights, deemed vital to public protection and thus worthy of international attention. Feminist critiques of international and regional law argue that the focus on civil and political rights is constructed on the premise of the dichotomy between public and private. Women’s role in society has traditionally been depicted as residing in social and cultural spheres, lying outside the power of public political action and further marginalizing women’s rights as insignificant. Similarly, SGBV has often been labeled a private matter leading to its exclusion

62 Ibid. 37
63 Ibid. 37
64 Charlesworth, Chinkin, and Wright, pg. 626.
from discussion in global political fora. To say that women’s rights are not political is vastly underestimating the extensiveness of violence effecting women. These discussions have also failed in their interpretation of SGBV as isolated incidents. Sexual and gender-based violence is a structural battle for power, domination, and privilege that targets women specifically in order to maintain the political segregation of the public and private spheres.\(^6\) Refugee women and girls often bear the brunt of this segregation as their transient status makes them more vulnerable to exertions of structural power. Additionally, as we will see in this study, refugee women and girls are disproportionately neglected in legal, representative, and socio-economic contexts. The evolution of rights to include women’s rights, SGBV, and refugee women’s protections has been an arduous process; however, there have been great strides in linking these areas and broadening the international communities’ attentiveness to human rights.

Over the past 25 years there has been a surge of responsiveness to the needs of women and girls on both a domestic and international level. International conventions, regional treaties, and domestic legislation addressing women’s rights have increased steadily over this period of time. There remain several barriers that continue to inhibit the full realization of the protection needs of refugee women and girls. States, as the main actors in the international system bear the responsibility to protect women and girls, and any other person for that matter, from violence. States have been slow to implement full protections and continue to bar women from the policy-making process.\(^6\) Despite the cumulative increase of domestic legislation addressing sexual and gender based violence issues over the last 25 years (see Figure 1), legislation is variable and incidence of violence still remains high.\(^6\)

\(^{66}\) Ibid. 491.


Figure 1: Countries with legislation against domestic violence, 1976-2016


Domestic legislation lacks overall consistency. Laws range in their recognition of types of violence (emotional, mental, or physical) and differ on their methods of enforcement. There is most notably an implementation divide between criminalization and conciliatory measures. Middle East and North African states have the least robust domestic legislative measures in place to address SGBV, while Latin American states have more extensive coverage. The variation in national violence protections adversely effects refugee women and girls as their status as non-nationals often results in inconsistent treatment and a lack of attentiveness to their basic human rights.

There exist more specific gender related provisions in place protecting all women, but their application towards refugees has generally been interpreted through judicial/non-judicial monitoring bodies and the the policies of non-state refugee service providers. States have often avoided their obligation in protecting refugee populations by arguing that their primary responsibility is to protect their own citizenry. States argue that refugees, as non-citizens, do not

necessitate the same protection obligations.\textsuperscript{72} As Goodwin-Gill states, “Refugees no longer enjoyed the normal relationship of citizen to state; were outside their country and effectively stateless; as such, they were to be assisted by the international community through its representative agency.”\textsuperscript{73} Due to state inaction, SGBV protection and programming has increasingly fallen on IGOs, NGOs, and CBOs. Regardless of domestic laws, states are bound to adhere to the extensive international laws, treaties, and custom dictating proper protection of women and girls from SGBV. If we are to take a human rights and humanitarian approach to addressing SGBV, then we can argue that international protection transcends state boundaries and extends protection responsibility and accountability for all those located within a nation’s territory. International and regional law relating to SGBV thus applies more generally to women of any immigration status or nationality. These entities, along with states, are held accountable through legal and peer reputational mechanisms in the form of international and regional law.

A. **International Treaties and Conventions**

International treaties and conventions are the codified foundation by which states and non-state actors are held accountable for SGBV protections. They create a hard law standard actors are expected to abide by and in their ideal form provide a framework to reprimand regressions. Treaty law is based on the premise of state responsibility in adhering to the terms outlined in each body the state is party to. This responsibility brings with it a measure of legal accountability, where states agree to accept these terms and agree to the repercussions for defection. SGBV protections lie primarily within human rights law. There is an extensive amount of treaty law that addresses SGBV protections for refugee women and girls indirectly through concept notes and monitoring mechanisms. One of these treaties is the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). CEDAW was put into place in 1979 after having been ratified by 189 states. The original document does not explicitly mention violence against women yet subsequent recommendations expand both the definition of discrimination to include violence and state’s obligations in providing protections. General Recommendation Number 19 stipulates,


\textsuperscript{73} Ibid. 131.
The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. This recommendation was not only important in its inclusion of gender based violence as a form of discrimination, but introduced the concept of due diligence, which obligates states to prevent, prosecute, and punish any act of violence within its jurisdiction. The due diligence principle has expanded state accountability to include the responsibility of state agencies and law enforcement to conduct appropriate investigations of non-state and private acts of violence. It emphasizes the complete prohibition of violence by all actors, where the state can be held liable for inaction and deemed complicit if they fail to enact proper measures to protect survivors of violence. The due diligence principle is extremely important when analyzing the rights of refugees located in another state territory as its application is universal and pertains to all people regardless of country of origin.

The monitoring body of CEDAW, the Committee for the Elimination of All Forms of Discrimination Against Women, was created with the ability to accept complaints and petitions from states. An optional protocol passed in 2000 allows claims from non-government groups and individuals and permits the committee of experts to initiate inquiries in situations that they view as having grave or systemic violations of the treaty body. CEDAW requires its state signatories to provide reports to its monitoring body at least every four years, while also allowing for shadow reports from women’s organizations and civil society actors. Since its creation, the committee has decided on 14 inquiries related to SGBV, none of which address the needs of refugee women and girls. Although CEDAW has created several key frameworks for the protection of women, it overall has weaker implementation measures and lacks state willingness to abide by its stipulations. Critics of the treaty recognize its importance in providing a level of protection for women and the further acquisition of basic rights, but expose its superficiality in the lack of recognition of the structural inequities that prevent the full realization of equal

CEDAW is ranked as the international treaty with the highest number of overall reservations and modifications, with seventy-seven countries entering reservations at the ratification of the treaty. Optional protocols are as their name describes “optional,” and enforceability of reporting and decisions is limited. This shows that although states are willing to recognize inequality at some level they are unwilling to challenge traditional societal frameworks to reduce its incidence. Despite these shortcomings, this convention continues to provide a base to measure discrimination against women and promote protection of women and girls in all forms by providing a level of legal and reputational accountability for states to abide by.

CEDAW is not the only international treaty or convention that is relevant toward the protection of women and girls from violence. Three foundational human rights treaties, the Convention Against Torture (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) also make mention of SGBV protections for women and girls. The ICESCR addresses several issues of SGBV through the promotion of equality in the workforce, right to health, right to education, and the right to non-discrimination in seeking effective remedy. The covenant’s monitoring body, the Committee on Economic, Social, and Cultural Rights, has expanded on these rights to address women and girls’ rights of the family, including equal access to marital rights under the law and women’s right to family planning and reproductive health resources.

The ICCPR also explicitly mentions protections for individuals based on sex in its non-discrimination clause. The dispute monitoring body of the ICCPR, the Human Rights Committee, has utilized Articles 2 and 7 in several arbitrations related to SGBV. The treaty body’s prohibition of torture, cruel, inhuman, or degrading treatment or punishment has increasingly been understood to include cases of SGBV and domestic violence. The interpretation of SGBV in this light is further expanded by the CAT.

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76 Charlesworth, Chinkin, and Wright. Pg. 633 and 636.
79 Ibid.
The Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) provides additional accountability mechanisms to protect survivors of SGBV, most extensively through its monitoring body, the Committee Against Torture. The committee’s General Comment No 2: Implementation of Article 2 by State Parties released in 2008 notes that state authorities that fail to act in preventing, prosecuting, or punishing known acts of torture or ill-treatment are considered complicit or responsible for its occurrence. The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking. The general comment goes on to discuss how states’ reports to the commission failed to report on the status of violence against women, despite gender being a key factor in determining a person’s status and risk of ill-treatment or torture. General Comment Number 3: implementation of Article 14 by State parties discusses the need of states to ensure equality and sensitivity to gender issues during judicial proceedings, including ensuring equality in access to complaint mechanisms and compensation. The comment goes on to discuss the need for states to weigh the testimonies of women and girls’ equal to those of men and enact “positive measures” in ensuring survivors can seek safe redress for abuse. These articles have specific significance for refugee women and girls, as the obligation to prevent treatment that amounts to torture, cruel, inhuman, or degrading has increasingly become an important factor in refoulement proceedings. The international community’s attentiveness to SGBV protections in human rights law has also expanded in the realm of humanitarian law.

The Fourth Geneva Convention, article 27 discusses how women civilians should be protected against "attack on their honour, in particular against rape, forced prostitution and indecent assault." While this creates safeguards against sexual violence, the article’s designation of sexual violence as a violation of “honour” is inherently gendered. Not only does it disregard the possibility of sexual violence against males, but the concept of “honour” is defined

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83 Ibid. Paragraph 22
by its moral and social significance implying a relationship with traditional concepts of women’s chastity and purity rather than protection from violence. By it s moral and social significance implying a relationship with traditional concepts of women’s chastity and purity rather than protection from violence. Future conventions, declarations and laws stray from the use of this terminology, substituting these phrases with “dignity” and physical and/or psychological harm. Additional Protocols I and II of the Geneva Conventions make mention of similar protections outlawing, “outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault” by military or civilian agents. The Rome Statute developed the definition of sexual and gender based crimes further to include, “rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.” The statute also includes provisions protecting against persecution on the grounds of an individual or group’s, “political, racial, ethnic, cultural, religious, gender ” affiliation. The provisions listed above are discussed in the statute in varying degrees as components of genocide, crimes against humanity, and war crimes. The evolution of the criminalization of rape and sexual violence in humanitarian law is a significant development that has contributed to the international community’s increased attentiveness to violence against women as a structural issue. For centuries sexual violence was viewed as another consequence of warfare undeserving of criminalization and interdiction in the law. The conflicts in the former Yugoslavia and Rwanda altered this view as the international community first hand witnessed the widespread and systematic nature of sexual violence employed by combatants. This challenged traditional views and showed that sexual violence is not disconnected from larger society. In both conflict and peace settings it is representative of deeper inequities and strategically employed to exert


89 Ibid. Article 7(h)
90 Ibid. Article 8
92 Ibid. 537
power over individuals and the community. The recognition of sexual violence as a war crime, and later genocide, created momentum for increased attentiveness to violence against women in international fora, as more than acts of private abuse but created a discourse that portrayed SGBV as a violation of basic rights and representative of engrained societal injustices. Other treaties such as, the Convention on the Rights of the Child, International Convention on the Elimination of All Forms of Racial Discrimination, International Convention for the Protection of All Persons From Enforced Disappearance, Convention on the Rights of Persons with Disabilities, and the International Convention on the Rights of All Migrant Workers and their Families, have general provisions that could be interpreted to include SGBV. They do not explicitly cite SGBV protections nor have they traditionally been cited in legal precedent.

The importance of international treaties in providing a standard of accountability cannot be overstated. These laws create a set of codified obligations states are required to adhere to and implement. The laws above remain broad in the obligations they impose on states, allowing states to interpret provisions on a case by-case basis. In theory, these laws are applicable to all women regardless of status or national origin and thus obligate states to provide protection for refugee women as well. States continue to evade their international treaty obligations and apply these laws on a limited basis for refugee women and girls. The application of these provisions to refugee women has been more effectively interpreted by treaty and non-treaty dispute settlement mechanisms and IGOs. Regional human rights law further describes state obligations in safeguarding women’s rights in relation to SGBV and enhance reputational and peer accountability mechanisms in the implementation of measures of protection.

B. Regional Treaties and Conventions

Regional Human Rights mechanisms have built on the momentum of the protections detailed in existing international law regarding sexual and gender based violence, while incorporating regional norms and policies into their delegation mechanisms. These treaties create a greater awareness of state responsibility for protections, while providing additional mechanisms of legal accountability through their judicial and non-judicial monitoring bodies. Despite the increased attention to SGBV on a regional level in the past several decades, increased awareness of protections does not necessarily translate to practice. The analysis of

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93 ibid. 537
regional treaties and monitoring mechanisms depicts a rising tide of consciousness towards SGBV, yet it does not translate to the full realization of these rights in programming or monitoring mechanisms. This is not meant to understate the importance of the rise of regional attention to these protections; it is important to remain realistic in our interpretation of law. Of the regional human rights bodies several stand out in their focus on sexual and gender based violence.

The Council of Europe’s Convention on Human Rights and Fundamental Freedoms (ECHR) contains provisions that do not explicitly mention sexual and gender based violence, however their interpretation has provided a level of protection in regional legal proceedings. A strength of the ECHR is its dispute settlement mechanism, the European Court of Human Rights (ECtHR) which has ruled on 35 cases related to SGBV. The ECtHR can review disputes with states on behalf of both individuals and groups. The rulings are binding, often requiring states to reevaluate their domestic laws in compliance with the ECHR or requiring direct compensation to the victims. The most widely applied articles from this convention in court proceedings are those that describe state’s obligation in preventing inhuman or degrading treatment and assurance of right to respect for private and family life. In court proceedings, inhuman or degrading treatment has been deemed to include domestic violence and sexual violence, primarily where the state failed to uphold its positive obligations and the principle of due diligence. In several cases, states were found in violation due to their lack of protection for asylum seekers whose refoulement would lead to a real or immediate threat of ill, inhuman, or degrading treatment or punishment. Respect for private and family life is an article that has been interpreted to mean rights within marriage, but also broadly defines private life to encompass, inter alia, a state’s obligation in protecting all individual’s sense of “physical,” “moral,” and “psychological”

94 See Figure 4
96 Ibid. Article 8.
98 See Jabari v. Turkey and Nv. Sweden
integrity. In 2011, the Committee of Ministers of the Council of Europe adopted the Istanbul Convention, which directly addresses states’ requirement in preventing and enforcing violence against women and SGBV. Violence against women is defined as,

violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

The convention describes the policies states must enact at all levels of government to ensure a coordinated effort at preventing and responding in due diligence for public and private acts of violence. The convention requires states to criminalize violence, implement domestic legislation guaranteeing the application of articles laid out in the convention, and create national monitoring and evaluation bodies to ensure full compliance. In addition to legal measures, the body emphasizes the proper training of professionals that will provide services to those effected by violence, including those providing psychosocial, financial, health, and other social services to survivors.

The Organization for American States’ (OAS) dedication to human rights formed early on in the creation of the regional institution. Latin American states sought the formalization of a public human rights regime based on persistent US interventionism in the region and the push towards the equality between sovereign states. This goal of creating a unified regional human rights system was interrupted throughout the mid-twentieth century as most member states had shifted towards militaristic and authoritarian government rule. The end of the Cold War ushered a wave of democratization and re-emphasis on human rights norms. The American Convention on Human Rights came into effect in 1978 detailing the civil, political, economic, social, and cultural rights guaranteed to all people in the region. In 1994, thirty-two OAS

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103 Ibid. 875
104 Ibid. 882-886.
member states ratified the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, also known as the Convention Belem do Para. The convention describes violence against women as any action in the public or private sphere which causes physical, sexual, or psychological suffering to women based on their gender. Through this convention, states are obligated to apply the standards of due diligence in refraining from engaging in violence, creating domestic legal, civil, and administrative prevention policies, and implementing programs to increase awareness within social, cultural, administrative, justice, and law enforcement agencies.

The OAS has a two-tiered human rights monitoring system tasked with investigating claims of state noncompliance with the obligations set out in the American Convention on Human Rights. Complaints by individuals are first reviewed by the Inter-American Commission of Human Rights. After a decision is made, the commission is able to refer the case to the Inter-American Court of Human Rights. The court usually reviews cases when the state has not implemented the commission’s recommendations or when a complaint is deemed particularly important from a legal perspective. Thus far, the Inter-American Commission has ruled on 12 admissible cases regarding SGBV, while the Inter-American Commission on Human Rights has ruled on 13 cases regarding states’ non-adherence to the protectionist principles laid out in the regional treaties. These monitoring bodies experience challenges such as scarcity of resources and lack of consistency in states’ adherence to decisions of the mechanisms. Despite persistent challenges, these institutions continue to be some of the most robust regional bodies for monitoring human rights in the world.

The Council of Europe and the OAS have been the most active regional bodies in detailing state obligations in protecting from violence and prosecuting states that fail to do so. There are several additional regional bodies that are worth mentioning in brevity. The African Charter on Human and Peoples’ Rights created by the Organization of African Unity, later replaced by the African Union, generated a body of law informed by the universalism of human rights proposed by the international community while also recognizing the unique historical and cultural experiences of African States. A distinctive and controversial aspect of the charter is its

106 See appendix 2b
treatment of women’s rights in Article 18.\(^{107}\) Article 18 begins by guaranteeing the rights of the family as the “custodian of morals and traditional values,”\(^{108}\) while later eliminating discrimination against women.\(^{109}\) Similar to other treaties, the charter designates women to a certain space in human rights frameworks, more specifically to the private sphere. There is continued debate on whether this article is reflective of the confinement of women as private, moral harbingers of their culture, or viewed as a positive interpretation of culture seen through the lens of human dignity and universal rights.\(^ {110}\) The Maputo Protocol seeks to clarify this debate by expanding on women’s inclusion in the regional institution.

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, or the Maputo Protocol, calls on states to alter legislative and institutional policy to ensure non-discrimination against women,\(^{111}\) while emphasizing state’s continued requirement to combat the underlying roots of inequality through public education and culturally specific campaigns.\(^ {112}\) The protocol is unique in its mention of female genital mutilation as a harmful practice to be prevented\(^ {113}\) and its specific mention of the rights of refugee women. Article 4 (k) recounts that states must,

\begin{quote}
ensure that women and men enjoy equal rights in terms of access to refugee status determination procedures and that women refugees are accorded the full protection and benefits guaranteed under international refugee law, including their own identity and other documents.\(^ {114}\)
\end{quote}

The inclusion of refugee women is significant in that it requires that states ensure the protection of refugees regardless of their nationality under domestic law. The dispute settlement body of the


\(^{110}\) Ibid. 342-343


\(^{112}\) Ibid. Article 2 (2)

\(^{113}\) Ibid. Article 5

\(^{114}\) Ibid. Article 4(k)
African Charter on Human and Peoples’ Rights has reviewed 8 cases regarding SGBV from 2000-2015.

As was noted earlier, Middle Eastern and Asian states lack human rights bodies with the capacities of those in Europe, the Americas, and Africa addressing SGBV. The Association of Southeast Asian Nations developed the Intergovernmental Commission on Human Rights (AICHR) in 2009 as a consultative body tasked with developing strategies for the protection and promotion of human rights amongst member states. The AICHR directly created the ASEAN Human Rights Declaration and has thus far held consultative meetings with the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children in order to promote their Declaration on the Elimination of Violence Against Women and Children. The Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) and the Bali Process on People Smuggling (Bali Process) were enacted in order to address issues of trafficking, which disproportionately affect women and girls.\footnote{Keisuke, Vida, and Ming Wan. "Human Rights Institutions in Asia." In \textit{Asian Designs: Governance in the Contemporary World Order}, edited by Saadia M. Pekkanen, 161-179. London: Cornell University Press, 2016.pg. 161. \url{www.jstor.org/stable/10.7591/j.ctt1d2dnn1.13}.(accessed August 2017).} The growth and creation of these institutions lies in the global push for an increase in human rights mechanisms. Unlike other regional bodies, state support remains limited due to the low impact of norm entrepreneurs and socialization in promoting human rights protections. States in Asia have supported human rights institutions in their creation, but have not been very involved in their design process, leaving them without complaint/dispute settlement mechanisms. Non-governmental organizations have been the strongest proponents of these institutions in these regions. They have been largely responsible for the formalization of these institutions’ design, creating a dilemma in the traditional state legitimization and monitoring of institutions.\footnote{Ibid.164-165.} Continued asymmetrical power relations, consensus on domestic non-interference, and decentralization of human rights institutions will continue to be a challenge; but the formation of these bodies provide a foundation for the growth of SGBV protections in regional law.\footnote{Ibid. 178-179.}

\section*{C. Other Legal Monitoring Mechanisms}

International law is multidimensional, codified through treaty law, yet further developed through state behavior and development of norms. Constructivism recognizes the effect of
socialization and normalization of custom on international behavior and action. The approach emphasizes the role of norms in prescribing and legitimizing agent’s behavior and preferences, while also playing a central role in actors’ identity formation. International and regional treaties and conventions provide a strong base on which norms are built, but they are not alone in forming human rights protections. Norms are created and disseminated through socialization. Non-state actors play a primary role in this regard. The UN and its multitude of commissions and bodies are fundamental to the establishment of norms of appropriateness and in the proliferation of human rights custom. As codified human rights law regarding SGBV is limited, we must examine other mechanisms of establishing state responsibility ie. declarations, resolutions, conferences, and IGO programming.

The 1948 Universal Declaration of Human Rights is the foundation of basic human rights protections, including SGBV protections. The declaration’s preamble makes specific mention of the equality between men and women, guaranteeing the liberty and dignity of all, regardless of sex.\footnote{United Nations. "Universal Declaration of Human Rights." 1948. Article 1. http://www.jus.uio.no/lm/un.universal.declaration.of.human.rights.1948/portrait.a4.pdf (accessed August 2017).} The declaration is not inclusive of gender nor does it include specific provisions regarding SGBV. This exclusion has led to criticism of the declaration for its failure to depict the socially constructed nature of gender and its supposed marginalization of those that identify outside the traditional gender-binary. This criticism is not unwarranted, but the document’s exclusion of gender is most likely reflective of the time period in which the declaration was drafted. The declaration’s importance cannot be devalued as it has paved the way for the progressive development of human rights and its universality has been interpreted to include protections for all women against SGBV. In addition to the Declaration of Human Rights, there were several additional conferences, declarations, and reports that expanded the international communities’ attention to issues of SGBV and represented the formation of a more widely recognized consensus on these protections.

The early 1990’s were landmark in the normative development of SGBV protections. In 1993, the United Nation’s World Conference on Human Rights in Vienna recognized the rights of women as integral to the realization of all human rights, bringing light to previous gaps in
protections for women. The conference discusses the importance of integrating rights and protections for women, including those related to SGBV, into all levels of life stating,

The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

The Conference of Vienna was crucial to the establishment of the mandate of the Office of the High Commissioner for Human Rights, whose reports and resolutions promote the universality of human rights and the elimination of discrimination based on sex and/or gender. The specific needs of refugee women and girls are highlighted in the conference plan of action, encouraging both UNHCR and states to work collaboratively in safeguarding guidelines for the protection of displaced women and girls. Where the Conference of Vienna sought to integrate women’s rights into the mainstream, UN General Assembly Resolution 48/104 or the Declaration on the Elimination of Violence Against Women (DEVAW) took this one step further in expanding the definition of gender based violence to include any act that may result in physical, sexual, psychological harm including threats of committing these acts and coercion in both the public and private spheres. Article 4 of the declaration calls on states to exercise due diligence in enacting legislation to punish perpetrators of violence, while invoking states’ positive obligations in condemning violence in all forms, regardless of societal customs. Although declarations are not signed and ratified by states, DEVAW facilitated a comprehensive discussion on the pervasiveness of SGBV within states and set forth clear guidelines on states’ responsibilities in combatting violence. Through DEVAW, the international community developed a more detailed working definition of SGBV, weighing equal importance to violence in the public and private spheres. These bodies laid the groundwork for the creation of a specialized human rights monitoring body tasked with evaluating states adherence to SGBV protection norms.

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119 Ibid. Section B (3).
121 Ibid. Section I (23).
123 Ibid. Article 38.
In 1994, the United Nations Special Rapporteur on Violence Against Women was established with a mandate to collaborate with other human rights bodies and states in the collection of information on violence against women at the national, regional, and international level. As part of its mandate, the Special Rapporteur is tasked with regularly disseminating information on the prevalence of violence against women and offering recommendations on reducing its incidence. From a normative standpoint, the Special Rapporteur is representative of the continued shift towards the recognition of SGBV as a public human rights issue not confined to the private sphere. The body is tasked with adopting a “comprehensive and universal approach to the elimination of violence against women, its causes and consequences, including cases of violence relating to the civil, cultural, economic, political, and social spheres.” The mainstreaming of women’s human rights issues was further brought to international attention by the Beijing Conference in 1995. The Beijing Conference Plan for Action builds upon the 1985 Nairobi Conference in calling on states to implement legislative measures in protecting, prosecuting, and punishing SGBV. One of the plan’s twelve steps refers specifically to violence against women as a structural issue, pushing states and service providers to enact holistic policies to combat violence at every level. The plan of action discusses how in some cases women are exposed to violence based on their gender and are thus in need of special protections and attentiveness by service providers. There is also a note on special protections for refugee women as their experiences before, during, and after their flight makes them more vulnerable to violence. In these instances, the conference recommends that states, intergovernmental, and non-governmental service providers include refugee women in the design and implementation of programs to prevent SGBV and hold perpetrators accountable for violations. They also recommend that refugee status is conferred equally to women, especially for claims that include well-founded fear of persecution related to sexual and gender violence.

127 Ibid. Section E (147)
128 Ibid. Section E (147.h)
Although non-binding, the Beijing Plan of Action included many important milestones in integrating SGBV protections into existing human rights protections.

In addition to declarations and conferences, there have been numerous resolutions and reports addressing the need for state diligence in preventing and prosecuting SGBV by the UN security council, general assembly, human rights council, and secretary general. General assembly resolution 61/143 calls upon states to criminalize SGBV in all forms and abolish any law or practice that discriminates against women. General Assembly Resolutions 62/133 and 63/155 urge states to end impunity for offenses against women and guarantee equal access to justice through systematic and multi-sectoral implementation of practices to end violence. These resolutions recognize the increased risk posed to women in conflict situations and call on states to pay particular attention to these populations, ensuring appropriate measures are taken to investigate and prosecute violence. In resolution 58/147, the General Assembly specifically denounced domestic violence and recognized it as a serious public human rights concern with long-term implications. The General Assembly urges states to strengthen domestic legislation, training for police, and implement public education campaigns on the prevention and response to violence. Similarly, Human Rights Council resolutions 14/12, 15/23, 12/17, 11/2, and 7/24 encourage states to adopt measures in upholding due diligence obligations in combating violence against women through legislative reform, elimination of discrimination in daily life, and the promotion of equal participation in decision-making.

Security Council Resolution on Peace, Security, and Women 1325 reaffirms the importance of women in the prevention and resolution of conflicts, while also emphasizing the importance of their equal participation in the maintenance of peace and security. The resolution further calls on states to enact special measures in protecting women and girls from gender based

violence, establishing an Interagency Taskforce on Women, Peace, and Security.\textsuperscript{136} Security Council Resolution 1820 reinforces the arguments made in resolution 1325. It is the first resolution in which the UN has explicitly associated SGBV with peace and security issues. The resolution declares that rape and other forms of sexual violence can constitute war crimes, crimes against humanity, and/or a component of genocide.\textsuperscript{137} Resolutions 1888 and 1889 further develop these concepts by addressing violence against women in conflict settings and their role in peace building post-conflict.\textsuperscript{138} The evolution of the international community’s treatment of sexual violence from a collateral effect of conflict to a war crime coincided with the regional conflicts of the 1990’s, as well as the normative development of sexual violence as criminal. There were several other developments during this time that contributed to this mainstreaming of SGBV discourse: Programme of Action of the International Conference on Population and Development (1994); the Southern African Development Community’s Declaration on Gender and Development (1997); Addendum on the Eradication of All Forms of Violence Against Women and Children (1998); Millenium Development Goals 3 (promote gender equality and empower women) and 5 (improve maternal health). Most recently the UN’s 2030 Agenda for Sustainable Development Goal 5 has made a target to eliminate all forms of violence against women in both the public and private spheres.\textsuperscript{139}

There has been an evolution of human rights in the last 30 years to include SGBV protections in law, norms, and programming. The distinction between public and private rights was lessened by the recognition of private rights as deserving of explicit human rights protection. The criminalization of sexual violence in humanitarian law also led to the recognition of SGBV as a structural abuse aimed to injure both individuals and exert dominance over communities. These developments in the normative basis of SGBV protections form a foundation of state legal accountability for the protection of all women. There has been an increase in attention to the rights of displaced women where they were previously excluded in law and declarations.

however limited. The points of spillover of SGBV custom for all women to include displaced populations is still unclear. Refugee protection continues to reside in a different realm than those of general human rights protections. They are most avidly supported by non-state actors, more specifically UNHCR. It is therefore critical to analyze the legal developments for women over the last 30 years within the context of refugee law and norms.

D. Refugee Specific Provisions

Human rights and humanitarian treaties and norms contain a breadth of law concerning sexual and gender based violence protections for all women. In most cases, with the exception of the African charter, these laws do not specifically address the concerns of refugee women and girls. For that reason, it is important to analyze the status of these protections within the context of refugee law and custom. Special attention will be paid to the role of non-state actors in the promotion of the basic rights of this population. The 1951 United Nations Convention Relating to the Status of Refugees and its Protocol of 1967 are the main international legal instruments detailing the rights of refugees and the responsibilities of states in upholding these rights. Although the convention is clear in designating states as the primary actors responsible for protecting displaced peoples, the application of the law remains uneven amongst states. The refugee regime has eroded due to the increased securitization and inward focus of state policy. States continue to use these points as justifications for dodging their role in providing for refugee populations, creating gaps in protection which non-state actors have attempted to fill. Refugee women and girls experience these breaks more acutely as they are both struggling to safely flee persecution in their home countries while battling deep-seated imbalanced social hierarchies disrupted by community upheaval. International refugee treaty law does not specifically protect women from SGBV. Similar to most human rights conventions/treaties created during this era, the law is male-centric in its design and confines women to the private sphere.

In the 1951 Convention, women are largely disregarded and there are no provisions protecting the unique needs of displaced women and girls in conflict settings. This lack of consideration is best exhibited by the underlying exclusion of gender as a ground to seek refugee status. According to the convention, entitlement to refugee status is based on a well-founded fear of persecution due to race, religion, nationality, membership in a particular social group, or political opinion. Gender is not considered as a field of persecution. Women may experience persecution based on the grounds stipulated in the convention, but they are also targeted based on
their gender and may experience specific violence related to this aspect of their identity. An individuals’ refugee status also depends on a states’ inability or unwillingness to protect individuals experiencing persecution. This is often the case for women in patriarchal societies, who frequently have uneven or obstructed access to resources within their own communities. SGBV is not simply an individual abuse. It is used as a means of exerting power, disrupting kinship and community structures, and punishing families. Women often bear the brunt of this violence as representatives of the family and private life.

The 1967 Protocol relating to the Status of Refugees does little to further develop the rights of refugee women and provides no additional protections for this group. The lack of formalized law and a specialized monitoring body for refugee law, creates an issue in punishing violators and in implementing legal accountability measures for states. Legal SGBV accountability for refugee women has no basis in formalized international refugee law. Instead it relies on the numerous other human rights conventions that discuss protections for all women. With the universality of human rights in mind, protection from SGBV should be applied equally to refugee women; this is often times not the case. There is a scarcity of codified law addressing refugee women’s needs. They have come to rely on norms and custom, as propagated by IGOs and NGOs, to promote basic SGBV protections. Momentum created by the progression of international protections for all women has had an effect on the normative development of SGBV protections for refugee women. An analysis of the evolution of UNHCR’s policies regarding SGBV, alongside the development of women’s protections internationally will serve to identify areas in which these norms have had a spillover effect.

The United Nations High Commissioner for Refugees (UNHCR) has functioned as the primary actor in ensuring that the needs of refugee populations are met. The organization has created numerous monitoring mechanisms, agendas, and programming frameworks to protect refugee women from SGBV. UNHCR has attempted to reduce the gaps in international and regional refugee law through extensive reports and working papers, serving as the main agent in the promotion of refugee rights internationally. The organization’s agency is circumscribed by states. States remain vital to the prevention of further abuse and in protecting those that have

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already experienced displacement. UNHCR must therefore collaborate with states in the advancement of its institutional goals, sometimes resulting in compromises in programming design and implementation. Despite these constraints, UNHCR’s authority has progressively developed to that of an expert in the field, granting it the ability to set agendas and effect policy in international fora. UNHCR’s extensive work has contributed to the development of state accountability measures through its influence on norms and its role as the chief actor in the realm of refugee protection. Through their extensive programming and involvement in policy development, the organization has increasingly gained legitimacy in international relations as both a provider of humanitarian aid and through its guidance on refugee policymaking.141

Concurrent with the development of women’s rights internationally, UNHCR developed its own organizational policies on addressing the rights of refugee women, focusing specifically on SGBV.

The first area of SGBV protection spillover occurred when the international community recognized that women were required and were deserving of specific human rights protections. This coincided with the creation of CEDAW and international community’s increased attentiveness to women’s rights as a human rights concern. The expansion of UNHCR’s strategies on the protection of refugee women were directly influenced by the development of women’s rights in international fora. In 1985, UNHCR’s governing Executive Committee (ExCom) held a roundtable on refugee women to discuss the protection needs of refugee women and girls. The roundtable was constructed with the momentum created by the UN’s Decade on Women (1976-1985) and followed discussions at the World Plan of Action on Women in Mexico City and the World Conferences in Nairobi regarding the human rights situation of displaced women.142 At these conferences, states emphasized the increased need to integrate specific protections for women in international and domestic policy. The conferences briefly made mention of the needs of displaced women as warranting of further attention.143 Following these developments, UNHCR’s ExCom recognized that refugee women and girls were

disproportionately vulnerable to sexual violence and violence based on their gender identity, and encouraged states to cater programs to the specific needs of this population. At its 36th session, ExCom recognized the interpretation of “particular social group” from article 1 A(2) of the 1951 Refugee Convention, to be inclusive of women asylum-seekers who face inhumane treatment “due to their having transgressed the social mores of the society in which they live.”¹⁴⁴ This inclusion is significant as it provides a basis by which women could make reasonable claim to status due to gender based persecution. Despite this initial interpretation, the actual consideration of women as members of a social group would not be revisited until the early 1990s. ¹⁴⁵ In 1989, UNHCR also established the Office of the Senior Coordinator for Refugee Women at the urgings of numerous NGOs, donors, and states. The senior coordinator is mandated to analyze country programs, facilitate staff trainings, conduct research, and assess the effectiveness of refugee women’s protection measures. ¹⁴⁶ This office has developed within UNHCR as the Senior Coordinator for Refugee Women and Gender Equality. The role has evolved with international discourses from a focus on women to concentrating more broadly on gender equality. ¹⁴⁷

UNHCR issued its first Policy on Refugee Women in 1990, recognizing that women and men experience displacement differently and that this should be reflected in programs serving these populations. The policy aimed to address women’s needs by emphasizing the inclusion of women in program planning and implementation processes.¹⁴⁸ The policy was released following the 34th Session of the Commission on the Status of Women, an inter-UN agency forum outlining the IGO’s greater institutional goals in ensuring the protection of women. The commission was informed by a series of expert meetings with states, NGO’s, IGOs, and CBOs, resulting in recommendations for the effective integration of refugee protections into law, policy, and programming.¹⁴⁹ Following these discussions, UNHCR released its first Guidelines on the

145 See NSF v. United Kingdom, Diene Kaba v. Canada
¹⁴⁷ Ibid. pg. 13
¹⁴⁹ Martin, pg. 114
Protection of Refugee Women outlining detailed areas of protection, assessment considerations, programming best practices, and potential barriers to providing services. The guidelines expanded the organization’s treatment of refugee protection by recognizing SGBV as a tool of intimidation or punishment, and thus structural in nature. The guidelines emphasized state and non-state actors’ need to abide by due diligence obligations in preventing and punishing abuse, while also considering the application of the principle related to asylum claims. These guidelines were further revised in 2002 to include more specific detail on needs of refugee women and their inclusion in programming. The rights of women in the international community developed in their context as human rights concerns. This expansion was mirrored by UNHCR’s increased attentiveness to the specific protection needs of refugee women and resulted in the creation of monitoring bodies and policy aimed at recognizing the need to uphold refugee women’s rights.

A second major area of influence on refugee SGBV protections came with the international community’s increased attentiveness to violence against women as both a human rights abuse and security concern. The conflicts in the early 1990’s resulted in systematic violence against women, creating large movements of displaced populations. In 1994, the international community reacted to these conflicts through the introduction of DEVAW and the creation of the mandate of the Special Rapporteur on Violence Against Women. Similarly, the increased focus on sexual violence as a security concern led to the recognition of states’ need to observe their positive obligations in protecting violence perpetrated by non-state and private actors in humanitarian law and norms. Following these developments UNHCR similarly altered its course with policy focused on the treatment of sexual violence, including domestic violence, as more than a private abuse of rights but also as indicative of systemic mistreatment. This led to the revisited discussion of gender as a ground for persecution, especially in relation to SGBV.

In 1995, EXCOM released a general conclusion on the interpretation of gender persecution within Article 1 of the Refugee Convention. The conclusion calls upon the High Commissioner,

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…to support and promote efforts by States towards the development and implementation of criteria and guidelines on responses to persecution specifically aimed at women, by sharing information on States’ initiatives to develop such criteria and guidelines, and by monitoring to ensure their fair and consistent application. In accordance with the principle that women’s rights are human rights, these guidelines should recognize as refugees women whose claim to refugee status is based upon well-founded fear of persecution for reasons enumerated in the 1951 Convention and 1967 Protocol, including persecution through sexual violence or other gender-related persecution.\textsuperscript{152}

Following this statement by EXCOM, UNHCR issued recommendations related to the treatment of gender persecution in its Guidelines on International Protection No. 1 on gender-related persecution and Guidelines on International Protection No. 2 on membership in a social group.\textsuperscript{153} These guidelines discuss how all investigations of refugee claims should at present take into consideration the gender dimension of persecution, therefore gender is already engrained in the existing grounds for analyzing persecution. The guidelines further recognize that sex can be interpreted within the membership in a social group category of persecution, albeit women could also qualify for refugee status based on the other grounds of persecution. The guidelines conclude that because the other grounds are inclusive of gender-based claims there is no need to add “gender” to the definition of persecution in Article 1 of the refugee convention.\textsuperscript{154} This interpretation of persecution was adopted at national and regional levels, most notably by the Council of Europe’s directive on refugee status and the Canadian Guidelines on Gender Based Persecution. These expansions are constantly evolving and although forward thinking in their recognition of gender’s dimension related to persecution, they have been accompanied with caveats that have not fully recognized gender claims within the social group category.\textsuperscript{155}


\textsuperscript{153} United Nations High Commissioner for Refugees. "GUIDELINES ON INTERNATIONAL PROTECTION: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.” May 2002.

\textsuperscript{154} Ibid. Section 2 A(6).

\textsuperscript{155} Edwards, pg. 25.
The guidelines attempt to develop and clarify the full scope of persecution as it applies to the definition of a refugee in Article 1 of the Convention, although is limited in its exclusion of gender as a separate type of persecution. Feminist theorists argue that the acknowledgement of gender based persecution within the definition of refugee is a milestone in recognizing the breadth of SGBV as it effects women structurally. Critics of the guidelines find flaw in its depiction of women as only capable of involvement in low levels of political activity where political persecution is derivative of other family members’ activity or a purely administrative engagement in politics. It seemingly underestimates the full scope of women’s persecution claims and further dismisses the formal recognition of gender as its own grounds for persecution. Some feminist scholars further critique the focus of international actors on the definition of persecution, as the real issues underlying women’s realization of rights are engrained within the framework of the law itself. These theorists argue that law as it currently stands is not reflective of the experiences of women and is inherently western and male-centric. Oswin argues that the recognition of gender-based persecution by UNHCR and some states is positive, but states unwillingness to address inherent biases in underlying social structures will continue to inhibit the full realization of rights. This is best exhibited by states’ continued reluctance to fully implement laws domestically regarding SGBV and their hesitancy in implementing normative prescriptions promoting violence prevention into practice. The following section of this study will explore these points further within the context of international and regional monitoring mechanisms. Despite these shortcomings, the guidelines serve as an important milestone in acknowledging that being a woman could in-and-of itself lead to certain forms of maltreatment and it has advanced the discourse surrounding refugee women’s rights as distinctive and deserving of specific attention.

Policies related to the protection of refugee women from SGBV further progressed with the movement within the human rights community from a discourse of women’s rights to gender equality. This is exhibited by the UN’s undertaking to mainstream women into programs not only through the promotion of women’s rights as separate from men’s, but as integrated into human rights more universally. The increased attentiveness to gender equality was institutionalized by the UN Economic and Social Council in 1997 through a process of

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156 Edwards, pg. 27.
157 Oswin, pg. 349-354.
mainstreaming women into all existing UN policies and programs.\textsuperscript{158} The policy focused on assessing the implications of programming on men and women, creating one policy based on these considerations rather than gender specific programming. In 2004, UNHCR introduced their official Age, Gender, and Diversity Mainstreaming (AGDM) Policy aimed at integrating the needs of displaced populations served into the design, planning, implementation and evaluation of the organizations’ multitude of policies and programs.\textsuperscript{159} UNHCR’s AGDM policy builds on the UN-wide mainstreaming policy through a two-level approach. First, it highlights the integration of men and women’s needs in all program development. Then, it supplements these generalities with specific programs to ensure the protection of refugee women. The model is focused on participation as a means of promoting equality and empowerment, where women’s “engagement in improving their own situation” is the driving force.\textsuperscript{160} The ability of UNHCR to implement these policies in its programming is reflective of a moderate level of agency in the protection and prevention of SGBV amongst refugee women. Although the AGDM policy is well-intentioned, it remains vague, lacks financial backing and falls short of the institutional capacity necessary for it to be completely effective.\textsuperscript{161}

The mainstreaming of women’s protections has remained highly bureaucratic, superficial, and unimplemented according to the needs of the specific displaced populations. UNHCR’s mainstreaming policy emphasizes equal participation of women in roles of leadership, but their programs do not always reflect these ideals. Olivius’ study on the effect of the UNHCR’s participation based programming on Burmese refugee women in Bangladesh and Thailand revealed the disconnect between policy and programming. In Bangladesh, UNHCR assessments of AGDM programming revealed that Rohingya refugee women were unmotivated to participate in programming and camp leadership. On further analysis, the programs instituted by the UN were revealed to be participatory in name only. UNHCR organized focus groups and facilitated

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\textsuperscript{158} Edwards, pg. 35 \\
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elections for women in leadership roles; but when interviewed for the study, women reported that they felt like they had no real power in effecting program design and implementation. Complaint reporting mechanisms had not been established, nor were there any other accountability measures in place for service providers on the ground.\textsuperscript{162}

In Thailand, the primarily Karen refugee population experienced the reverse issue. Karen refugees had seemingly adopted a highly participatory model on their own through the creation of organized community based organizations (CBO’s) with programs designed and implemented by the refugees themselves. Rather than being met with praise for enacting participatory programs, these CBOS were challenged on multiple fronts by IOs and INGOs. Funders continued to dictate what was in their opinion appropriate program models and gave the power of implementing these models purely to these organizations. In this case, the IOs and INGOs involved treated the displaced populations as identical to other refugee populations in the world and implemented a westernized style of gender empowerment.\textsuperscript{163} The Karen refugees were thus labeled as unwilling to participate in UNHCR’s model of AGDM programming. In reality, the population sought a more grassroots form of organization and participation that went unrecognized by funders and other stakeholders. The inconsistency between the AGDM participatory model and programming has also been exhibited in studies of other refugee groups. Fiddian-Qasmiyeh’s analysis of Sahrawi refugee women’s programming has been described as detached from the populations being served, as its focus on westernized models of empowerment and control of donors over program design led to the prescription of “ideal” recipients of assistance.\textsuperscript{164} Rwandan refugee women also expressed frustration at not being afforded the opportunity to effect camp policy and voiced concerns over the lack of accountability mechanisms for individual programmatic feedback.\textsuperscript{165} The disconnect between policy and service provision on the ground is indicative of a larger issue for refugee SGBV protections; namely in determining the balance between the priorities of funders and ensuring appropriate attention to the specific needs of the refugee women being served.


\textsuperscript{163} Ibid. Pg. 54-57


UNHCR updated its guidelines on protection in 2008 as the Handbook for the Protection of Women and Girls, which includes a more holistic depiction of refugee women and girls’ lives.\textsuperscript{166} The handbook attempts to describe the challenges faced by refugee women and girls from a more general human rights perspective focusing on political, economic, social, and cultural challenges faced by the population, rather than concentrating on their displaced status. Included in this handbook is the depiction of SGBV perpetrated by both state actors and in domestic settings. Protection by states is therefore encouraged for violence in public and private settings. The inclusion of private acts of violence, including domestic violence, as abuses of human rights follows the international community’s increase in attention to these issues in public fora. As was shown in previous sections, the early 2000’s witnessed the development of the international community’s treatment of women’s rights as a separate category of protection to an emphasis on integration and the universality of rights for all persons. It is also important to note that the handbook recognizes, however briefly, the need for UN personnel to adhere to the guidelines and rights imparted upon refugee women and girls. This inclusion is a result of numerous reports of abuse from UN personnel and peace keepers since the 1990s, most notably in the Central African Republic in 2014.\textsuperscript{167} The UN claims to have a zero tolerance policy for these abuses, has an Office of Internal Oversight, and numerous monitoring bodies in place though there has been little assistance or accountability for victims. This is due to a lack of funding, reliance on peacekeeping soldiers, and slow enforcement mechanisms.\textsuperscript{168} This is telling for two reasons. It is reflective of the need for the more appropriate training of UN staff, while indicative of the organization’s need to improve internal accountability with the populations it serves.

The progress of protections for refugee women from SGBV has undoubtedly had an effect on the normative and legal foundation of human rights on an international scale. There are more measures in place to build and enforce legal accountability than there have ever been in the

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past. There still remain large gaps in the realization of the existing treaty law and customary law in place to protect refugee women. The development of women’s rights and SGBV protections internationally have had an effect on the advancement of protection norms for refugee women. The importance of UNHCR as the primary agent in the promotion of norms surrounding refugee protection cannot be overstated. Its multilayered approach to both humanitarian service provision, as well as its focus on disseminating research regarding displaced populations makes the organization vital to the assurance of state accountability and policy making regarding refugee women SGBV protections. As was shown in this section, UNHCR policy is often informed by developments in international policy making, while its emphasis on collaboration with other IGOs, NGOs, and CBOs contributes to the organization’s effective provision of services to the populations it serves. That being said, there continue to be challenges to fulfilling its mandate due to its circumscribed position relative to states. UNHCR’s organizational policy represents the ideal, while implementation is often limited by state priorities. UNHCR still receives a large portion of its funding from states, meaning its programming must appeal to state preferences.

The proliferation of norms cannot be confined purely to norm entrepreneurs. In order for these customs to take hold, there must be substantial state support in the form of legislation and implementation domestically. Law is the formal domain by which individuals and groups strive for reform and provides a tangible resource for advocacy. As was shown in Figure 2, there has been an increase in domestic legislation regarding SGBV protections over the past 30 years. There remain national barriers to protecting refugee women against SGBV, those being the overall erosion of the refugee regime, lack of consensus on domestic SGBV laws, and differing cultural attitudes and norms about violence. Judicial and non-judicial oversight provides an additional area in which states can be held accountable for their failure to adhere to the international and regional laws in place. These measures create a forum by which we can analyze the interpretation and implementation of law and norms by states related to the protection of refugee women from SGBV, as well as the practical applicability of scrutinizing these frameworks.

III. International and Regional Case Law

A refugee woman is no different from any other human being and is thus entitled to the same basic rights guaranteed to all people. The previous analyses depict the basis for the
protection of all women from SGBV in international and regional law and normative frameworks. The law lacks detail regarding specific protections for refugee women and girls. Its application for this population has been based on its interpretation by non-state actors and, as this section will address, monitoring bodies. The shortage of law and formal state accountability mechanisms necessitates the analysis of refugee women and girls’ protection rights at a larger scale, namely from the perspective of protections for all women. Accountability is most clearly monitored through international and regional judicial and non-judicial monitoring bodies, acting as both decision makers and normative contributors to human rights laws. An analysis of existing SGBV related case law for all women is thus important to determine applications for these human rights laws as they relate to refugee women and girls specifically.

In accordance with institutionalist approaches to analyzing international law, judicial and non-judicial monitoring bodies have increasingly functioned as primary actors in ensuring regulations are monitored and implemented. This has become especially true with the growth of mechanisms of reviewing complaints by non-state actors and individuals. 169 By the ranking of some legalization scholars, international human rights tribunals and monitoring bodies rank high on the presence of obligation, precision, and delegation; labeling them as “hard law” institutions.170 The creation of international and regional bodies has led to an expansion of legal norms and regional cooperative measures in the human rights field. Monitoring bodies clarify states’ legal responsibilities by interpreting and investigating adherence to laws established in treaties. They also add a level of peer reputational accountability by contributing to the development of norms of state compliance. The existence of judicial and non-judicial monitoring bodies indicates a level of normative influence, however the effectiveness of monitoring bodies in compelling observance to these standards is a much debated topic in the realm of international relations. There are numerous factors that can be used to measure the efficacy of organizations in accomplishing their purpose such as: compliance with judgments, usage rates, and accomplishment of official and operative goals. 171 This remainder of the study will focus on

analyzing case law from international and regional bodies as they represent the advancement of legal standards in the promotion of SGBV protections for refugee women.

Legal decisions regarding sexual and gender-based violence have progressed over the last 20 years. In the landmark case *Aydin v. Turkey*, the European Court of Human Rights ruled that rape could constitute torture. This decision equated the extreme physical and psychological suffering caused by sexual violence to torture. Although there remain some inconsistencies in this ruling, such as its departure from the accepted definition of torture requiring the infliction of suffering with the intent to elicit information, the case proved influential in affecting the international communities’ view of SGBV. 172 State accountability for the crimes committed in this case were clear, as the perpetrators were agents of the state. The case sparked further debate in international law studies discussing the extent to which the state can be held responsible for crimes of sexual violence. Following this case, the International Criminal Tribunal for Rwanda ruled in *Prosecutor v. Akayesu* (1998) that systematic rape falls within the definition of genocide. The case defined sexual violence as, "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence, which includes rape, is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive." 173 Other cases internationally and regionally involving sexual crimes have also been ruled as amounting to torture. 174 These cases are the foundation of the movement towards a stronger emphasis on a state’s positive obligations in protecting, investigating, and prosecuting SGBV from both state and non-state actors. Decisions by regional and international monitoring bodies provide a breadth of knowledge regarding the interpretation of law and the proper treatment of SGBV claims.

International Criminal Court (ICC) cases were not included in the overall case study analysis, as most of the current cases including charges of SGBV are in process or the suspects remain at large. Nevertheless, the court’s rulings remain important in understanding the international community’s treatment of SGBV. The ICC has brought charges for SGBV crimes

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174 See Pauline Muzonzo Paku Kisoki v. Sweden
in 15 cases, but has only successfully convicted 1 person of these crimes.\textsuperscript{175} Half of the cases (7 cases) remain in the pre-trial phase awaiting the the accused’s presence in court.\textsuperscript{176} The ICC was criticized for many years by IGOs and NGOs for its inattentiveness to offenses related to SGBV, despite their recognition as criminal in international humanitarian law. As a response to this criticism, the ICC released its Policy Paper on Sexual and Gender Based Crimes in 2014. The policy paper elevates SGBV crimes to “one of its key strategic goals” aiming to end “impunity for sexual based crimes of concern to the international community as a whole.” \textsuperscript{177} The ICC proposes to do this through an analysis of gender issues for all crimes under its jurisdiction. The policy emphasizes distinguishing SGBV crimes from crimes with gender or sexual elements by identifying the relevant articles in the Rome Statute that address SGBV directly ie. crimes against humanity (inclusive of rape, sexual slavery, enforced prostitutions, forced pregnancy, and other violence of similar nature)\textsuperscript{178} and war crimes (including outrages upon personal dignity, mutilation, humiliating or degrading treatment, and experimentation).\textsuperscript{179} Although there was a clear identification of the crimes that are considered SGBV within the statute, the ICC noted several barriers in prosecuting SGBV crimes. Challenges include: under reporting of SGBV; cultural, religious, or societal stigma; limited domestic capacity to investigate claims; conducting investigations during ongoing conflict; and inadequate domestic support services. The principal obstacle to investigating sexual and gender based crimes’ are evidentiary as these crimes are often reported after other crimes have been committed and require immediate on-the-ground support in order to be substantiated.\textsuperscript{180} The court’s change of policy is indicative of the substantial agency of NGOs, IGOs, and other non state actors. Firstly, the ability of these actors to influence this international body’s adherence to the law shows a high level of normative power in promoting SGBV standards and accountability. Additionally, the policy paper notes

\textsuperscript{176} See Appendix 3
\textsuperscript{179} Ibid. Articles 8(2)(b)(xxii), 8(2)(e)(vi), (8(2)(b)(x), 8(2)(c)(ii), and 8(2)(c)(i).
\textsuperscript{180} International Criminal Court. "Draft Policy Paper on Sexual and Gender Based Crimes." February 2014. Section 42.
that some of the challenges to the prosecution of SGBV crimes can be alleviated by the active participation of IGOs, NGO.s, medical clinics, and other service providers. Despite the challenges identified, the draft policy assists in expanding the international community’s knowledge of SGBV within law. Further adjudications by the court and other monitoring bodies along this line contribute to the furthering of jurisprudence related to the criminalization of SGBV.\textsuperscript{181}

The case review undertaken in this study analyzed 100 international and regional admissible monitoring body cases on sexual and gender based violence between 1979 and 2015. Cases reviewed by the following judicial and non-judicial monitoring bodies were analyzed: Committee Against Torture (6 cases), Committee on the Elimination of Discrimination Against Women (14 cases), Human Rights Committee (4 cases), International Criminal Tribunal on for the former Yugoslavia (3 cases), International Tribunal for Rwanda (3 cases), and the Special Court for Sierra Leone (1 case). The succeeding regional human rights courts/commissions were analyzed: African Commission on Human and Peoples’ Rights (8 cases), European Court of Justice (1 case), European Court of Human Rights (35 cases), Inter-American Commission on Human Rights (12 cases), and the Inter-American Court on Human Rights (13 cases). Each case was categorized by the topics covered in the case background and ruling. Determination of topic was based on identification of common terms and phrases within each case background. Descriptions of each case and their categorization can be found in Appendices 2a and 2b. Figure 4 details the percentage of international and regional cases that include specific charges or violations. A factor to consider in the coding of the cases is that the phrasing of charges and certain rights differs between monitoring bodies. The following categories warrant further explanation on their categorization:

- **Right to Private and family life**: Cases focus on articles in treaties that use the terminology “right to private life” and “right to family life” such as: Article 17 of the American Convention on Human Rights rights of the family, Article 11 of the American Convention on Human Rights right to privacy, Article 8 of the European Convention on Human Rights right to private and family life, Article 18 of the African Charter right of the family, and/or Article 17 of ICCPR right to privacy and family life. Private life has been interpreted to mean the relationship individuals have with one another and also includes the requirement to protect the physical and moral integrity of persons, inclusive of their sexual lives. This

category requires states to uphold positive obligations in preventing the infringement of a person’s private or family life even in personal relations.

- **Fair Trial/Independence of Courts:** This category is inclusive of violations related to court proceedings and fair trial standards, such as knowledge of charges, proper representation in the court, access to appeals, etc. Fair trial also means adequate access to court proceedings and individuals' right to have their case reviewed in the court. Included in this category is the independence of courts from outside influence and non-discriminatory nature of proceedings.

- **Due diligence:** Includes instances in which the phrases "due diligence" and/or "positive obligations" are mentioned in the judicial and non-judicial monitoring bodies’ decision. Also when the decisions mention a failure by the state to investigate, protect, or prosecute violations or violence.

- **Economic, cultural, and social rights:** Refers to instances in which states were charged with failure to uphold their obligation according to: Article 5 of CEDAW, altering social or cultural mores towards SGBV; Article 3 of CEDAW, the promotion of political, social, economic, and cultural legislative developments; and African Charter Article 22, right to economic, social, and cultural rights.

- **Domestic violence:** Domestic violence refers to physical, psychological, or emotional harm inflicted upon a person by an intimate partner.

- **Sexual violence:** Sexual violence refers to physical or psychological harm inflicted in a sexual nature. Perpetrators can include private individuals and/or state actors.

- **Custodial violence:** Custodial violence refers to violence by authorities while in police custody or detention.

- **State violence:** State violence will refer to any violence perpetrated or condoned by state actors, including security forces, members of government, local representatives, and/or law enforcement officials.

- **Female Genital Mutilation (FGM):** Female Genital Mutilation includes procedures or policies that promote the intentional alteration or injury to the female genital organs for non-medical reasons.\(^{182}\)

All other topic areas are explicitly mentioned in the charges for each case. The cases analyzed were deemed admissible by the monitoring bodies, meaning that domestic legal remedies had been exhausted prior to filing the complaint. There are several noteworthy inadmissible cases, but they were not included in the analysis analysis because the applicants still had domestic methods of remedy.

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Figure 2: International and Regional Monitoring Body Legal Cases on Sexual and Gender Based Violence 1979-2015

Source: Appendices 2a and 2b, Analyses of International and Regional Monitoring Body Cases on SGBV

According to the cases analyzed, there has been a sharp increase in the number of SGBV cases brought to international and regional bodies over the past 30 years. The exact cause for this is difficult to discern, but factors contributing to this growth could include: increase in law regarding SGBV, increased institutional capacity to process claims, change of international and regional bodies’ ability to accept individual and/or organizational complaints, advocacy efforts of IOs and NGOs, and the growth of legal and peer reputational accountability norms, as is exhibited by the previous section of this study. The analysis reveals slight differences in the treatment of claims amongst international and regional bodies. Firstly, the number of cases adjudicated at the regional level were more than double those at the international level. Amongst the international monitoring body legal cases analyzed, the most common charges were for violations of the prohibition of torture, fair trial standards, discrimination, and rights of the child.

The majority of these complaints were for accusations of sexual violence, while one-third addressed issues related to domestic violence. Amongst regional bodies, the highest percentage of cases focused on violations of the prohibition of cruel, inhumane, or degrading treatment, right to private and family life, and state’s positive obligations in preventing SGBV. Regional cases principally focused on sexual violence and state violence.

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183 See Appendix 2 and 3
184 See Figure 2
The cases analyzed had intersectional similarities. In all of these cases, states or their actors were deemed either active participants in perpetrating violence or complacent in its prevention and punishment. For both regional and international courts, the highest percentage of cases were tried on the basis of state’s failure in upholding positive obligations in preventing SGBV, prohibition of cruel, inhumane, or degrading treatment, and fair trial standards and independence of courts. In nearly half of all the cases studied (47%), the court ruled that the state was not performing diligently and their lack of meaningful action was a violation in its own right. Additionally, there was extensive precedent for treating SGBV claims as cruel, inhumane, or degrading treatment. State responsibility for SGBV crimes are generally attributed to either state actors who are direct perpetrators of violence or individuals acting with state consent or acquiescence. In the latter designation a state can be held responsible for violations when they fail to take action in situations where they are aware of harm or possible harm. States are similarly accountable for more generic failings, where the state lacks appropriate administrative or legislative processes to fulfill its positive obligations. In circumstances where non-state actors are the de facto authority, their violations of SGBV protections have been tried as

Source: Appendices 2a and 2b, Analyses of International and Regional Monitoring Body Cases on SGBV

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185 See Appendix 1
Figure 4: International and Regional Sexual and Gender Based Violence Court Cases by Topic Area, 1979-2015

Source: Appendices 2a and 2b, International and Regional Monitoring Body Cases on SGBV

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**Figure 4**: Cont'd International and Regional Monitoring Body Cases by Topic Area, 1979-2015

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Source: Appendices 2a and 2b, International and Regional Monitoring Body Cases on SGBV.
amounting to lack of state diligence.\textsuperscript{187} Violations of fair trial standards and independence of the courts were also found to be present in 36\% of cases, with a larger percentage of violations found in the regional courts. These cases also overwhelmingly focus on claims of sexual violence.\textsuperscript{188}

**Figure 5: International vs. Regional Monitoring Bodies Types of Sexual and Gender Based Violence Cases**

![Graph showing percentages of different types of violence cases in International and Regional courts.]

Source: Appendices 2a and 2b, Analyses of International and Regional Monitoring Body Cases \textsuperscript{189}

In the European Court of Human Rights, the subject of most complaints were against individual non-state perpetrators of violence, where states were deemed negligent in fulfilling their obligations of enacting appropriate measures to combat violence. Complaints of domestic violence such as *Opuz v. Turkey* found states guilty of failing to satisfy their responsibilities in preventing violence and protecting victims. The state was found responsible for the cruel, inhuman, or degrading punishment that occurred therein. In *Opuz v. Turkey* (2009), Opuz and her mother are recurrently abused by Opuz's husband and her husband's father. The authorities repeatedly dismissed the victims' complaints until the husband's father killed the victim's mother. He was tried and convicted of murder, but his sentence was mitigated and he is released on parole due to good behavior.\textsuperscript{190} On the other hand, amongst Inter-American commission and court cases, the majority of violence was perpetrated directly by actors of the state. Cases such as

\begin{itemize}
  \item See Appendix 1
  \item See Appendix 1
\end{itemize}
*Rosendo Cantu v. Mexico* (2010) focus on incidents in which state personnel are the direct perpetrators of violence and the state fails to provide appropriate remedy to the victim.\(^{191}\) In *Rosendo Cantu v. Mexico* (2010), an indigenous woman is raped by state soldiers on her way home from work. After seeking medical treatment, she reported the incident to the authorities and was referred to the military prosecutor’s office. She requested a review by civil authorities due to the lack of transparency and the possibility for conflict of interest of the military court. Her pleas went unheeded and her case was dismissed. These cases depict the regional difference in complaints, which is in turn reflected by the design of monitoring bodies in addressing the specific issues faced within their jurisdiction. This lends one to question the capacities of monitoring bodies in instituting change based on their regional legitimacy and their strength in influencing state behavior.

Despite differences in institutional motives, design, and capacity there is a clear development of the treatment of SGBV from a private issue to an overall human rights concern. SGBV towards women and girls is a civil and political human rights issue that permeates into many layers of society. Monitoring bodies have overwhelmingly concluded that states are failing to criminalize SGBV as should be the case in domestic law.\(^{192}\) States are not only responsible in preventing violence at the hands of their representatives, but must also ensure that citizens are properly protected in their home and private lives. The treatment of domestic violence as a violation of cruel, inhuman, and degrading treatment is a prime example of a normative development in legal accountability. Crimes related to intimate-partner violence historically lacked attention and were not criminalized in the public sphere. From this we can conclude that there is extensive material depicting the presence of legal accountability measures in requiring states to act proactively in the prevention and prosecution of SGBV for all women. The main concern is whether these developing norms have cascaded to include refugee and asylee women. The universal applicability of human rights protections undoubtedly is inclusive of refugee women and girls, but it remains to be seen if the existing mechanisms in place have been put into practice in advancing accountability regardless of immigration status.

**Figure 6: Admissible Refugee/Asylum International and Regional Court Case Topic Areas**

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\(^{191}\) See Appendix 1

Of the 100 admissible cases studied, 10 referred to SGBV complaints experienced by refugees, asylees, or asylum applicants. In only one case was their reference to violence experienced by refugees or asylees that already possessed that legal status. The remainder of cases were in challenge of asylum application denials based on SGBV claims. Amongst the international judicial and non-judicial monitoring mechanisms, the Committee Against Torture was most active in reviewing cases of SGBV for asylum applicants. Regionally, the European Court of Human Rights processed the highest percentage of cases on asylum related issues. Asylum applicants in 40% of the cases, claimed that the denial of their status and subsequent deportation equated to cruel, inhuman, or degrading punishment; 50% of decisions made were on the basis of torture. In most of these cases, claimants did not rely on gender persecution as their grounds to request asylum. Their claims were often based on politically motivated persecution. The perpetrators of violence employed acts of violence specifically meant to inflict injury on women, thus creating a gendered component to their persecution. In more than half of the cases, the claim was based on sexual violence experienced in claimants’ home countries at the hands of state authorities193 and community actors.194 Domestic violence was a main factor of the

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complaint in only two cases. These cases warrant more in-depth study in order to determine the terms of their SGBV claims and if there is a relationship between general SGBV law and monitoring body precedent as it applies to refugee and asylee women and girls.

A. Committee Against Torture

The Committee Against Torture is a non-judicial treaty monitoring body, tasked with ensuring states properly adhere to the CAT. The committee has reviewed six cases regarding SGBV, five of which were lodged by asylum applicants. The majority of these cases refer to states’ potential violation of the non-refoulement principle, in that the deportation of the applicant was ruled as constitutive of torture. In analyzing claims of torture, there is first an analysis of the basis of the complainant’s claim of torture separate from their immigration status or claim of asylum. The committee then seeks to understand the context in which the torture took place, including examining ground for personal persecution, to determine whether there is continued risk of torture of ill-treatment upon return. General Comment No. 1 details the analysis the committee undertakes in determining whether there is a continued risk of torture upon refoulement. The comment details the following questions the committee addresses in its deliberations,

(a) Is the State concerned one in which there is evidence of a consistent pattern of gross, flagrant or mass violations of human rights (see article 3, paragraph 2)?
(b) Has the author been tortured or maltreated by or at the instigation of or with the consent of acquiescence of a public official or other person acting in an official capacity in the past? If so, was this the recent past?
(c) Is there medical or other independent evidence to support a claim by the author that he/she has been tortured or maltreated in the past? Has the torture had after-effects?
(d) Has the situation referred to in (a) above changed? Has the internal situation in respect of human rights altered?
(e) Has the author engaged in political or other activity within or outside the State concerned which would appear to make him/her particularly vulnerable to the risk of being placed in danger of torture were he/she to be expelled, returned or extradited to the State in question?
(f) Is there any evidence as to the credibility of the author? (g) Are there factual inconsistencies in the claim of the author? If so, are they relevant?

Despite the prevention of refoulement, the ruling of the commission does not guarantee the granting of asylum or residency. It merely prevents deportation to the country in which the claimant risks torture. The ruling is declaratory and the state may choose to deport the claimant to a third state where there is no real risk of torture. This could lead to the granting of asylum, a residency permit on humanitarian grounds, or, in countries such as the United States, special protections under CAT. There is also vagueness in the CAT in reference to Article 3 and claims related to cruel, inhuman, or degrading treatment, as they are not technically included in the prohibition of refoulement.

The examination of an individual’s continued risk of torture often overlaps with an analysis of grounds of persecution. There is more flexibility in the CAT as a claim’s wellfoundedness does not require the abuse to be widespread. There is overlap in the determinations because often times torture is conducted against specific groups of people that may fall under the categories of persecution, as per Article 1 of the Refugee Convention. Article 3 of the CAT is absolute, in that if the burden of proof for torture is established, there is no need for an analysis of a person’s status. All people have the absolute right not to be deported to a place where they face torture. An individual must show that they specifically face the risk of torture upon return, regardless of the basis for persecution. In circumstances in which a case is brought to the Committee Against Torture, the claim of asylum is secondary to the claim of torture. The claimant must substantiate their claim of torture in the context of Article 3, while never having to clarify their status under Article 1 of the Refugee Convention. Following the ruling of the committee, a state is responsible for reevaluating the claimant’s case in the context of the decision, often involving the reevaluation of their grounds for persecution. As to the applicability of existing human rights law to the enforcement of refugee protections, the cases reviewed by the Committee Against Torture depict a more universalist treatment of existing

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199 Ibid. 443.
protections. As the successive cases will show, complaints based on Article 3 of CAT focus on the claim of torture rather than the establishment of the right to asylum.


In *Pauline Muzonzo Paku Kisoki v. Sweden* a woman was subjected to violence at the hands of state actors, sought refuge elsewhere, and in threat of expulsion appealed to the CAT. The case is representative of non-state actors’ involvement in inciting custodial violence perpetrated by politically aligned security forces. The case also develops the definition of torture as it relates to asylum connected to political persecution and gender based violence. On October 18, 1990 members of the Popular Movement of the Revolution (MPR) Party of Zaire visited Pauline Muzonzo Paku Kisoki at her restaurant and requested to hold a party rally there. Pauline refused as she was an activist for the opposition Union for Democracy and Social Progress (UDPS) party. Two days later Pauline was raped at her home in front of her children by security forces. Following the incident, she was taken to Makal prison in Kinshasa where she was victim to ill treatment and degrading punishment.

The conditions in the prison were cramped and unhygienic: seven inmates were forced to share a 3 by 6 metre cell and lack of sanitary provisions necessitated inmates defecate on the floor. Everyday the guards would force the women to dance and would beat and rape them. Ms. Kisoki was detained for one year without trial and escaped after her sister bribed a prison official. She subsequently fled to Sweden where she requested asylum on November 14, 1991. Ms. Kisoki’s application was denied in both preliminary hearings and appeals on the basis that the political climate in Zaire allegedly posed no further risk for the claimant. She resubmitted her application twice with evidence from the Special Rapporteur on Zaire and forensic medical evidence from the Center for Torture and Trauma Survivors in Stockholm but these submissions were also denied. The state claimed that inconsistencies in the complainant’s retelling of her story delegitimized the claim. The complainant claims that Sweden falsely interpreted the situation in Zaire and the state was accused of violating Article 3 (prohibition of torture, cruel, degrading or inhuman treatment or punishment) of the Convention Against Torture. 200

When evaluating cases in which an individual claims asylum on the grounds of torture, the reviewing body must consider several different factors in substantiating the claim. Torture is

an individualized crime. It is perpetrated against individuals with the aim of eliciting information or certain acts. In order to prove a reasonable fear of torture, there must be evidence that the individual in question was personally targeted for violence. The committee cited the case of Mutombo v. Sweden which set specific criteria for the evaluation of applicants’ claims of non-refoulement based on a persons’ personal risk of being subjected to torture. The case must present evidence that similar abuse would be a foreseeable consequence of the return to his/her home country.\(^{201}\) Ms. Kisoki’s counsel attempted to substantiate the complainants claim of continued risk by citing reports by the UN Commission on Human Rights’ Special Rapporteur on Zaire and the UNHCR “Background paper on Zairian refugees and asylum seekers” regarding the systematic torture of female prisoners in Zaire prisons.\(^{202}\) Although there was proof of the widespread nature of this violence, the claimant must prove that the individual is personally at risk. The Committee noted,

> It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a person would be in danger of being subjected to torture upon his return to that country; specific grounds must exist that indicate that the individual concerned would be personally at risk. Similarly, the absence of a consistent pattern of gross violations of human rights does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.\(^{203}\)

The committee was therefore required to analyze the complainant’s specific risk within the larger context of persecution in the country. The committee found that the author had provided sufficient evidence that she was a political activist for the opposition party and that membership in this party continues to pose a risk of ill-treatment. Her political affiliation analyzed alongside her history of detention and torture were reasonable grounds for preventing the complainant’s return to her home country. The committee made note that torture victims experience extreme psychological trauma. This trauma often results in issues recalling memories, therefore inconsistencies in victim’s stories are understandable. The committee ruled that the appeals court denial of the complainant’s case based on this premise was inappropriate and failed to recognize the psychological impact of persecution. The state was found guilty of violating Article 3, and ordered a stay on the author’s deportation as her return would constitute torture or ill-treatment.

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\(^{203}\) Ibid. Paragraph 9.2.
Pauline Muzonzo Paku Kisoki v. Sweden clarifies the application of laws related to asylum assertions. It relies on the individual nature of torture, where individuals must prove the personal risk they face if returned to their home country. In this case, the applicant’s claims were not based on a singular assertion of sexual and gender based violence, however on a history of torture with a gendered dimension. SGBV was used as a method of terrorizing the applicant in inducing physical and psychological harm, thus amounting to torture. Ms. Kisoki’s claim of torture and continued risk of abuse was substantiated on an individual level therefore she could claim violation of non-refoulement when put in the context of her claim. This case has set important legal precedent in the consideration of SGBV as an element of torture, while also setting a standard of practice for state’s legal accountability in protecting individuals from violence regardless of their national origin or immigration status.


A.S. v Sweden reviewed by the Committee Against Torture in 2000, addressed an Iranian woman’s claim of asylum in Sweden based on her fear of persecution if returned to her home country. The case is reflective of a state actor using their position to force the complainant into a marriage in order to lawfully inflict sexual violence upon the claimant. The analysis of the case relies on the author’s ability to detail the risk specifically posed to herself if returned, corroborated by information regarding the widespread nature of the crimes and commonplace of state sanctioned punishment.

A.S. applied for asylum in Sweden on December 29, 1997 and her application was subsequently denied. A.S.’s husband, a high ranking official in the Iranian Air Force, was killed during training in unclear circumstances. In 1991, her husband was proclaimed a martyr meaning her and her son would be supported and supervised by the Bonyad-e-Shahid, the Committee of Martyrs. The committee was known for its power within Iranian society. One of its main aims is to convince widows like A.S. to remarry. A.S. repeatedly refused to do so, but in 1996 a high-ranking leader of the Bonyad-e-Shahid, Ayatollah Rahimian, forced A.S. to marry him by threatening to harm her and her children. She was forced into a mutah marriage, or a short term marriage of 1.5 years, which meant that she did not live with her husband but would be at his disposal for sexual services. In 1997, A.S. fell in-love with a Christian man and they met in secret. This amounted to adultery according to Iranian law. Their affair was discovered and the complainant was interrogated by women authorities of the revolutionary court and transported to
her temporary husband’s home. Her husband beat her for 6 hours and after 2 days she was released. Prior to the discovery of her affair, A.S. had arranged a visa to visit her sister in Sweden and she left the country in 1997 after her encounter with her temporary husband. Since her departure, A.S. was informed by her sister-in-law that both she and her lover were convicted of adultery and sentenced to death by stoning. Her asylum application was rejected by the Swedish Immigration Board and the Aliens Appeal Board.\textsuperscript{204} Sweden was accused of violating Article 3 (prohibition of torture, cruel, inhuman, or degrading treatment) of the Convention Against Torture.

The state contested A.S.’s application on several grounds, the primary being that they did not believe that the author’s claims were credible based on her behavior and supposedly inconsistent details when recounting her story. They claimed that she lacked sufficient evidence of her situation while in Iran, including no documentation of her \textit{mutah} marriage and the verdict of adultery.\textsuperscript{205} The committee requested additional information from the claimant. Mainly, transcriptions from the claimant’s son’s asylum interview. Counsel provided these interviews as well as information from several human rights NGOs and academic organizations detailing the nature of \textit{mutah} marriages, the activities of the Committee of Martyrs, and information regarding charges of adultery for women in Iran. Counsel additionally cited the case of \textit{Jabari v. Turkey} as further evidence of the situation for women accused of adultery in Iran and as jurisprudence for similar claims of persecution.\textsuperscript{206} The committee ruled that the author provided substantial evidence to corroborate her individual risk of torture or inhuman treatment, while also providing evidence of the widespread practice of death by stoning for adultery in Iran. The information is validated by reports from the US State Department, Amnesty International, and reports of the Special Representative of the Commission on Human Rights on the situation of human rights in Iran.\textsuperscript{207} The committee placed significant weight on the testimony of her eldest son, which gave merit to all of A.S.’s claims. The committee therefore ruled that the deportation of A.S. would result in a violation of Article 3 of the CAT by Sweden, necessitating an immediate stay on her removal.

\textsuperscript{205} Ibid. Paragraph 4.1-4.17.
\textsuperscript{206} Ibid. Paragraph 7.8
\textsuperscript{207} Ibid. Paragraph 8.7
The proceedings of this case reaffirmed the determinations made by other CAT reviewed cases regarding SGBV towards refugee/asylum women. Similar to the case of Pauline Muzonzo Paku Kisoki v. Sweden, this case recognizes the trauma experienced by torture survivors and leaves room for inconsistencies in authors’ retelling of their case. It additionally relies on the author’s ability to prove an individualized threat, while also substantiating the abuses as not uncommon. The reports created by non-state actors were treated as evidence affirming the situation in Iran. The extensive reference to outside source material regarding widespread abuse in the complainant’s home country is indicative of the importance of NGOs, IGOs, and other such organizations in their monitoring of human rights and the contributions they can make to case law. The ruling of the court based state accountability on protecting against further risk of abuse, it is reflective of the enforcement of states’ positive obligations without relying purely on the victim’s status as an asylum applicant. The judgment made by the court did not grant the claimant asylum, but it did affirm her right to be free from a situation in which she was at risk of torture and continued SGBV.


T.A. v. Sweden was reviewed by the Committee Against Torture in 2003. Similar to other refugee and asylee SGBV cases reviewed by the committee, the complainant’s claim is focused on the prevention of refoulement. T.A., a Bangladeshi woman, applied for asylum for her and her daughter in Sweden on October 13, 2000. Her application was denied by the Migration Board and the Alien Appeals Board, while her application for residence on humanitarian grounds and for a stay of execution of expulsion were also denied. In Bangladesh, T.A. and her husband were active members of the Jatiya party. T.A. was appointed women’s secretary in the local women’s association of the party. She was responsible for informing people about the work of the party, organizing membership meetings, and participating in demonstrations.\(^{208}\) In September 1999, she was arrested by police in connection to a demonstration where a grenade was thrown. She was released the next day as there was no evidence against her. From November to April, her family was terrorized by members of the Awami League, forcing her husband into hiding. In August 2000, T.A. was arrested for participating in a political demonstration, released, then re-detained by police and members of the opposing party with her 4-year-old daughter. At the police station

she was physically abused and raped to make her confess the crime of illegal arms trade. She was burned with cigarettes, strung upside-down, and hit with a belt. She was released after signing a document stating she would no longer participate in political activities. Following the incident, the complainant sought medical treatment and was told by family members that the authorities were searching for her. She fled the country and sought asylum in Sweden. She submitted information to the Swedish Migration Board regarding her membership in the Jatiya party, as well as several medical examinations detailing the extent of the violence and its effect on her mental health. The state was accused of violating Article 2 (institute effective legislative, administrative, and judicial acts to prevent torture), Article 3 (prohibition of expulsion, return, or extradition of those at risk of torture or inhuman treatment), and Article 16 (prevention of cruel, inhuman or degrading treatment including training of law enforcement officials and fair judicial review).

The state contended that the situation in Bangladesh had improved since the author left the country, citing increased attention to human rights and lack of institutionalized persecution in the country. The state contested the risk faced by the author upon her return as the political party she was a member of, the Jatiya party, had won seats in the Bangladeshi Parliament, while the Awami Party had fallen from power. As the Awami party no longer held a main seat of power in the government, the board held that her allegations could not be attributed to the state but were rather, acts of individuals. Based on this information, and the supposed lack of evidence, Sweden contended that there was no real or immediate risk of torture to T.A. if returned to her home country. The complainant submitted additional information from the author’s sister, claiming that the author was being sought by authorities in Bangladesh. The complainant also submitted reports from Amnesty International detailing how political opponents, including those in the Jatiya party, are subjected to torture, sexual violence, and mistreatment in police custody. The committee reviewed the information presented and decided that although the offending party is no longer in power, the complainant’s history of torture and her husband’s alleged involvement in a political crime still put the author at personal risk of torture if returned. The committee ruled

209 Ibid. Paragraph 2.3-2.4
210 Ibid. Paragraph 2.5, 2.9, and 2.11
211 Ibid. Paragraphs 4.1-4.9
that the deportation of the complainant and her daughter would result in a violation of Article 3 of the Convention.  

Similar to the previous cases reviewed, the committee substantiated the complainant’s claims based on the previous incidence of torture. After corroborating the claim, they concluded that the complainant would be at risk upon return. The author’s sister’s claim that T.A. was still sought by Bangladeshi authorities was treated as evidentiary material by the court in supporting the court’s decision. The fact that the offending party was no longer in power was found as insubstantial grounds to disprove the claimant’s case. Similarly, the claim that the crime was perpetrated by individual non-state actors was unimportant as the abuse was found to be both widespread and posed a specific risk for the complainant. This sets important precedent regarding consideration of all offenders equally under the law, whether they are state or non-state actors. A country’s obligation is to protect all people from abuse at the hands of any actor. There was no direct reference to previous case law in the committee’s decision, however the court’s investigation of the claim followed a similar line of reasoning as previous cases. This case is significant in further emphasizing that human rights law is applicable to all regardless of status and stresses the responsibilities of states, including in countries of asylum, in upholding their positive obligations in ensuring there is no further abuse.


V.L., a woman from Belarus, applied for asylum with her husband in Switzerland on December 19, 2002. Their asylum applications were denied jointly, as well as later when filed separately. Similar to the previous CAT cases analyzed, V.L. v. Switzerland addresses a complainant with preexisting history of torture and the reasonable fear of abuse upon refoulement. V.L.’s husband stood for local election in Belarus in 1995 and in 2000. In a letter to a newspaper, he publicly criticized the president of the country. In 2000, he was interrogated by security forces and attacked by four unknown men. He left the country in June 2001 and applied for asylum in Belgium, which was rejected. V.L. remained in Belarus where she was frequently taken in for questioning on her husband's whereabouts. In September 2002, her passport was

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212 Ibid. Paragraphs 7.4-8
confiscated by security forces and she fled the country to join her husband in Switzerland.\textsuperscript{215} The couple claimed asylum based on political persecution spurred by the husband’s activities. Their claim was first denied by the Federal Office for Refugees and the Swiss Asylum Review Board. In 2004, V.L. requested a reevaluation of her case separate from that of her husband as they no longer lived together. She mentioned for the first time that security forces in Belarus had sexually abused and raped her to illicit information. Following the sexual abuse, she reported the incident and received a medical examination substantiating her claims. Rather than investigate the abuse, authorities threatened her with mutilation and death. When she confided in her husband, he responded with insults, humiliating remarks, and forbade her from mentioning the abuse to Swiss authorities.\textsuperscript{216} The migration board refused to reopen or reevaluate her case because they believed that her claims were unsubstantiated. The state was accused of violating Article 3 of the CAT.

The state party’s main challenge to the case was that the information submitted by the claimant was riddled with inconsistencies. The primary inconsistency noted, was that V.L. failed to mention the sexual abuses suffered at the hands of police in her initial asylum claim.\textsuperscript{217} The state cited General Comment No. 1, detailing the considerations a party must take in establishing a violation of Article 3.\textsuperscript{218} The state argued that the lack of substantive evidence, an absence of direct political involvement of the complainant, allegedly falsified documents from the initial joint asylum application, and inconsistencies in the claimant’s testimony were reason enough to dismiss the case.\textsuperscript{219} The complainant contested the state’s assertions by noting that her affiliation with her husband and her previous experience of torture still presented a risk for her upon return. Additionally, the delay in sharing the information regarding her abuse is attributed to the protestations and emotional abuse she suffered from her husband. The committee challenged the claims of the state on multiple fronts and ruled that in returning V.L to Belarus, Switzerland would be violating Article 3 of the CAT and be guilty of putting V.L. at risk of facing torture.

The committee relied on established precedent in reaching its decision. The case was deemed admissible by the committee as per Article 22 of the CAT, despite the complainant not

\begin{footnotesize}
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\item \textsuperscript{215} Ibid. paragraph 2.1
\item \textsuperscript{216} Ibid. paragraph 2.3
\item \textsuperscript{217} Ibid. paragraph 6.5
\item \textsuperscript{218} Ibid. paragraph 6.3
\item \textsuperscript{219} Ibid. paragraph 6.2
\end{itemize}
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having specifically mentioned a violation of Article 3 in the initial report as was the case in *A.K. v. Switzerland*.\(^ {220}\) The case was deemed admissible due to the seriousness of the claim and exhaustion of all forms of domestic remedy. The committee first established that the situation in Belarus exhibited a pattern of widespread gross and flagrant violations of human rights, specifically towards individuals that participated in opposition politics. It was recognized through an analysis of reports by the Special Rapporteur on the situation of human rights in Belarus, the Special Rapporteur on Violence Against Women, the Belarus Ministry of Labor and Security, and the US State Department Human Rights Country Report that this type of sexual violence against a wife, or divorced spouse, of a political activist was not uncommon in the country and thus substantiated the complainant’s previous claim of abuse.\(^ {221}\) In conducting this analysis, the committee followed previous precedent in confirming paragraphs 8a, d, and e of General Comment No. 1 for the respective claimant’s case. Conveying SGBV often results in a fear of loss of privacy, humiliation, and community ostracization.\(^ {222}\) The committee dismissed the state’s questioning of the validity of the complainant’s claims, by noting that a delay in relaying sexual violence is reasonable due to the psychological trauma it inflicts.

SGBV is beyond intimidation and torture by state parties, it is multifaceted in that victims often experience violence on multiple fronts. V.L. experienced physical abuse from state authorities in Belarus, but was reluctant to share this information based on intimidation from her husband and fear of community reprisal. This case recognized that refugee/asylee women that experience SGBV are often subject to abuse in different aspects of their life. Following the initial abuse, survivors often face continued pressures from patriarchal societal structures and community assumptions. The case served as important precedent in its investigation of the claim through an individualized lens, taking into account the effects of violence experienced by the complainant both in her home country and in the country of asylum. The state was held legally accountable for potentially exposing V.L. to continued abuse in her home country and in doing so violated international human rights law. The ruling held that V.L. is entitled to the same protections as any other person irrespective of her immigration status.

\(^ {220}\) Ibid. paragraph 8.1.  
\(^ {221}\) Ibid. paragraph 8.4  
\(^ {222}\) Ibid. paragraph 8.8

*C.T. v. Sweden* was reviewed by the Committee Against Torture in 2006 regarding a woman’s denied claim of asylum. The claim is representative of the claimant’s fear of custodial and sexual violence upon refoulement to her home country. In April 2002, C.T., a Hutu Rwandan citizen and member of the PDR-Ubanyanja party, was arrested with her brother for attending a party meeting in Kigali. She was imprisoned in a container in Kigali along with 6 other women where she was repeatedly interrogated and raped under threat of execution. Soon thereafter she became pregnant with her son, K.M. In October 2002, a soldier helped her escape and arrange a flight to Sweden where she claimed asylum. Her son was born in Sweden in 2003. In March 2004, C.T.’s application for asylum was denied due to its “lack of credibility.” C.T. filed for an appeal and further claimed that her return would not only amount to torture but that she would be tried by the Gacaca courts for her alleged involvement in a massacre at Kigali hospital. The Gacaca courts were set up by the government to avenge the genocide of 1994 and had been highly criticized by the international community. The denial of her asylum claim was upheld in appeals. She filed a complaint with the Committee Against Torture on the grounds that her forced return to Rwanda would amount to torture and would thus violate Article 3 of the CAT.

The state first argued that the political situation in Rwanda did not provide grounds to grant asylum, as they claimed that there had been positive developments in welcoming opposing political parties to the fore. They emphasized that C.T. did not effectively detail her involvement with the PDR-Ubanyanja party, nor did she show proof of membership. There was also question to the credibility of the complainant’s claims to residency for medical reasons, as well as the assertion that she would face trial in the Gacaca courts upon return. The state concluded that the claimant and her son would not face a personal risk upon return due to the changed political climate in Rwanda and her inability to substantiate claims of continued risk. The complainant responded by providing additional information to the court in the form of: information regarding the PDR-Ubanyanja party membership standards; reports of human rights abuses against this opposition party; correspondence with a woman that was in detention with

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224 Ibid. paragraph 2.2
225 Ibid. Paragraph 3.2
226 Ibid. paragraph 4.5
227 Ibid. paragraphs 4.8-4.10
C.T., who had since been granted asylum in France; documentation regarding the Gacaca court and witness material of her sentencing by the court; additional medical documentation including the diagnosis of rape and post-traumatic stress disorder.228 The counsel also noted that he/she represented a previous case in which Sweden granted asylum to another Rwandan member of the PDR-Ubuyanja party in 2005, meaning there was precedent set by the state substantiating the widespread nature of abuse for members of this political party.229

The committee dismissed the complainant’s claims related to the Gacaca courts, as there was insufficient information to prove a risk therein. The remainder of C.T.’s claims were confirmed through an analysis of the evidence in relation to General Comment No. 1 and asylum jurisprudence. The committee noted that the state failed to properly address the complainant’s claim that she was repeatedly raped in detention as a result of which she became pregnant, despite the medical documentation confirming this claim. The committee went on to explain that based on jurisprudence, complete accuracy cannot be expected of victims of torture. When a child is born from abuse, it causes repeated trauma for the survivor as the child serves as a constant reminder of the ill-treatment. The committee cited the previous cases of Alan v. Switzerland,230 Tala v. Sweden,231 and Kisoki v. Sweden as further evidence that inconsistencies are to be expected for individuals that have experienced the trauma of torture and that these discrepancies are not enough to discredit the individual’s claim.232 The committee ruled that the removal of C.T. and K.M. would constitute a violation of Article 3 of the Convention and the state was ordered not to deport the complainants to their home country.

In this case, the complainant was successful in establishing the burden of proof for a violation of Article 3 of the CAT. The complainant was able to prove that the risk of torture in her home country went “beyond mere theory or suspicion,” and that the danger of being tortured was “personal and present” but not necessarily “highly probable.”233 In doing so, she prevented the refoulement of her and her son to Rwanda. This case depicts the complicated relationship between the CAT and the Refugee Convention, as both are undoubtedly pertinent to cases of asylum where torture is involved. Claims made under Article 3, however, conceptually do not

228 Ibid. paragraphs 5.1-5.8
229 Ibid. Paragraph 5.7
232 C.T. and K.M. v. Sweden, paragraph 7.6
233 General Comment No. 1, Paragraphs 6-7.
rely on provisions of the Refugee Convention. The Committee Against Torture focuses on the well-foundedness of a torture claim, necessitating an analysis of the widespread nature of torture within a state. This often involves an examination of whether the state is known to torture persons of a specific political opinion, religion, or social group. The application of the laws conveyed by the CAT for refugee/asylee women indicate some spillover, although limited, of general human rights SGBV protections for this population.

B. Human Rights Committee

The Human Rights Committee (HRC) is a non-judicial treaty monitoring body of 18 experts that meets several times a year to review yearly reports submitted by the UN’s 168 member states regarding compliance with the ICCPR. The committee serves as a monitoring body for the covenant and has the ability to review individual complaints against states, as per the ICCPR First Optional Protocol. To date, 116 states have ratified the First Optional Protocol, giving the HRC jurisdiction over fielding individual complaints and determining whether states have violated treaty law.\(^{234}\) The HRC has ruled on four admissible cases regarding SGBV, one of which specifically addresses the protection needs of a refugee or asylum seeker effected by SGBV. The complaint was lodged by an asylum seeker and her daughter based on the continued threat of female genital mutilation in their home country.\(^{235}\) Diene Kaba v. Canada is the only admissible case regarding FGM reviewed by a regional or international monitoring body. The case creates important precedent for the treatment of FGM related claims, especially for those who are seeking refuge from this gender related persecution.

1. Diene Kaba v. Canada (2008)

Diene Kaba, a Guinean woman, applied for refugee status in Canada for her and her daughter on the grounds of membership in a social group and domestic violence in May 2001. On February 20, 2001 Ms. Kaba's daughter, Fatoumata, was abducted by two elderly community women in order to perform a female circumcision on the young girl. The incident was arranged by Ms. Kaba’s husband. When she averted the procedure, she was severely beaten by her husband. Ms. Kaba and her daughter fled the country in May 2001. In the same year, the

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\(^{235}\) See Appendix 1
Canadian immigration board denied her and her daughter’s application for refugee status. In 2003, Ms. Kaba applied for an exemption to apply for a permanent resident visa on humanitarian grounds and in 2005 she applied for a pre-removal risk assessment. In these reports, Ms. Kaba submitted documentation regarding the prevalence of FGM in Guinea, as well as letters detailing threats to her life and her daughter by her husband if they returned. In addition to the risk of FGM for her daughter and fear of retribution from her husband, Ms. Kaba expressed worries regarding the recent arrest of five family members due to their involvement in supporting a failed coup of the Guinean President. Ms. Kaba’s applications were denied and her date of removal was set. In May 2016, Ms Kaba’s husband officially divorced her in Guinea with her brother representing her at the hearing. Her husband was granted custody of their daughter. The father obtained a court ruling ordering the return of his daughter. Ms. Kaba’s brother sent a letter detailing how her husband planned to have his daughter undergo excision and had promised her in marriage to a nephew once she returned to the country. Despite this information, Canada did not grant Ms. Kaba her claims to asylum nor residence on the premise that her claims lacked credibility.  

The complainant accused Canada of violating Articles 7 (prohibition of cruel, inhuman, or degrading treatment), 9 (right to liberty and security of person), and 24 (rights of the child) of the ICCPR. The state contested the claims of the complainant by citing a lack of evidence corroborating a risk for her and her daughter. They supported their decision by citing the illegality of the practice of excision according to Guinean law. The state reasoned that due to the illegality of the practice it was within the state’s ability to protect Ms. Kaba’s daughter from the abuse. The committee found that the Canadian authorities had thoroughly investigated the claims related to Ms. Kaba’s application and deemed them unsubstantiated. The committee ruled that there lacked evidence proving risk upon return, therefore there was no violation by Canadian authorities on this front. The committee cited the cases of Daljit Singh v. Canada and Dawood Khan v. Canada to substantiate this decision. In these cases, the claim was deemed inadmissible due to the state’s determination that the complainant lacked credibility and proper evidentiary material to prove danger. The Committee ruled that the complaints related to her daughter, were admissible by the committee. The committee detailed how the Canadian authorities refused

237 Ibid. paragraph 4.2
to review additional evidence of her daughter’s risk of excision and thus did not sufficiently analyze her case. This resulted in the obstruction of effective domestic remedy. The committee noted that female excision is prohibited by law in Guinea, however the legal prohibition is not complied with de facto. In the country, female genital mutilation continues to be widespread performed with impunity. Despite the fact that Ms. Kaba’s daughter was 15 years old at the time of the decision, the evidence provided by the applicant and her family proved to be sufficient to prove fear of persecution. The committee noted that female genital mutilation equates to cruel, inhuman, and degrading treatment or punishment, thus the deportation of Fatoumata Kaba would equate to a violation by the host country. The inadmissible cases of Khan v. Canada and Blanca Lilía Londono Soto et al. v. Australia were mentioned in order to further emphasize state’s have the responsibility to protect those at risk of cruel, inhuman, or illegal treatment through the thorough examination of the respective complaint. 238 The committee ruled that the state was in violation of of Articles 7 and 24 in relation to the applicant’s daughter Fatoumata and urged Canada to refrain from deporting Fatoumata to Guinea.

This case set important precedent for the consideration of FGM as cruel, inhuman, or degrading treatment or punishment and warranting of state protection. Although the practice was illegal in the state, the state lacked the will and/or resources to properly protect the complainant from abuse by non-state actors. It was therefore the host country’s duty to ensure that the claimant would not be subjected to further violence on return. The ruling demonstrates that regional and international courts only have limited powers in implementing law. The Human Rights Committee only had the ability to suggest the state not deport the complainant, but did not have any method of compelling its recommendation. States’ choice to adhere to the decision of the committee is dependent on the perceived legitimacy of the body and the peer reputational costs of straying. Despite the case having been found partially inadmissible and the determination that Ms. Kaba’s fear of persecution based on her status as a single woman was unfounded, the commission ruled in favor of protecting a potential victim of excision from return to the country of risk. The case differentiates law from practice in its recognition that although FGM is illegal its widespread practice and lack of domestic prosecution for perpetrators poses a reasonable fear of persecution.

238 Ibid. paragraph 10.1
C. European Court of Human Rights

The European Court of Human Rights (ECtHR) is the most active regional monitoring body in adjudicating SGBV claims. Between 1979 and 2015, the court ruled on over 35 admissible cases ruling in favor of the complainant. The court has deemed three cases admissible and three cases inadmissible regarding SGBV claims from asylum seekers. The cases tried by the ECtHR differ from those tried by the Committee Against Torture, as the ECtHR has a more diverse body of law by which it draws its jurisdiction. The Convention for the Protection of Human Rights and Fundamental Freedoms has a broader focus on a range of protection ranging from civil and political to economic, social, and cultural rights. This results in a different analysis by the ECtHR, which seeks to understand the violation of rights from a multidimensional perspective, not necessitating proof of previous abuse in ones’ home country to substantiate a claim and inclusive of violations’ effects on both treatment and psychosocial wellbeing. From the ECtHR cases there is an obvious push by the court to position human rights first over other concerns, however limited. There are still very few cases regarding refugee and asylee women being reviewed by the court, while the amount of cases reviewed domestically by states is undetermined. The court’s power in enforcing its decisions is perhaps stronger than other regional courts due to the ability of the Committee of Ministers to execute judgments. What remains to be seen, is if the court’s diminished power in recent years will result in the tapering off of the legitimacy of its human rights monitoring mechanism.

Similar to the Committee Against Torture, the ECtHR emphasizes the need to evaluate claims based on the substance of the complaint. The focus is not on the individual’s status but on the determination of whether there were violations in the state’s treatment of the claimant and if this wrongdoing could lead to a risk of violence upon return to ones’ home country. That being said, the claimants in these cases did not always experience abuse prior to leaving their home country. In several cases, the risk developed as a result of a life change in the host country or abuse in the host country. The cases reviewed by the ECtHR regarding SGBV for refugee women are extremely important in understanding legal accountability for states as they emphasize the need to analyze human rights violations regardless of an individual’s status. The body is also unique in its investigation of claims of abuse following arrival in host country and at the hands of host country actors. This depicts some spillover of general human rights protections
related to SGBV for refugee women and girls, as host states are being held responsible for failing to properly protect and prosecute violations of human rights that occur at the hands of the host state. This supports the universal applicability of human rights laws to state nationals and non-nationals alike.


Jabari v. Turkey was the first case deemed admissible by the ECtHR for an asylum applicants’ claim related to SGBV. The case set precedent for state accountability where the deportation of the applicant could reasonably be held to cause irreparable suffering. Jabari v. Turkey expands the definition of persecution based on membership in a social group by including in this category women who have transgressed societal mores. Women in this social group experience threats of violence from both state and community actors. The case set important precedent amongst SGBV claims and is cited in many regional and international cases.

In 1995 while attending college in Iran, the applicant met a man and fell in love with him. The applicant’s family disapproved of their marriage so the man married another woman in 1997. The applicant continued to see the man in private and had a sexual relationship with him. In October 1997, the couple was caught in public and detained. The applicant was forced to undergo a virginity exam in custody. After several days she was released from detention with her family’s help and immediately fled to Turkey. She entered Turkey illegally, then tried to flee to Canada using a counterfeit passport. She was detained by French authorities and sent back to Turkey. Once in Turkey, she was arrested for using a forged passport. She claimed asylum, but was told that she passed the legal time limit for applying for asylum, which in Turkey is within 5 days of arrival in country. She appealed to UNHCR, who reviewed her asylum case and recognized her claim on the well-founded fear of persecution upon return to Iran due to the high risk of punishment such as death by stoning, flogging, or whipping. She lodged a complaint with the Ankara Administrative court against her deportation, which was dismissed on the grounds that her deportation would not cause irreparable harm. In the meantime, she had submitted her claim to the European Court of Human rights, was issued a stay of deportation, and a temporary residence permit while the case was pending.239 Turkey was accused of violating Articles 3

(protection from inhuman or degrading treatment) and 13 (right to effective remedy) of the ECtHR.

In the analysis of the case, the court cited several other cases as precedent. *Soering v. United Kingdom* was referred to for its treatment of Article 3 of the ECtHR, remarking that where there is a serious risk that a person will experience torture or inhuman treatment, deportation or extradition would constitute inhuman treatment. The court also cited *Chahal v. United Kingdom, Cruz Varas and others v. Sweden, and Vilvaraj and Others v. United Kingdom*, which similarly invoked Article 3 in the prevention of deportation on the grounds of torture, inhuman or degrading treatment. The European Court found primary fault with the mechanical application of Turkey’s existing asylum regulations and its inconsistency with regional and international law standards. The five-day requirement to make an asylum claim instituted by Turkey’s Asylum Regulation of 1994 seemingly denied Jabari of proper investigation of her case and method of redress. The court noted,

*The Court is not persuaded that the authorities of the respondent State conducted any meaningful assessment of the applicant's claim, including its arguability. It would appear that her failure to comply with the five-day registration requirement under the Asylum Regulation 1994 denied her any scrutiny of the factual basis of her fears about being removed to Iran. In the Court's opinion, the automatic and mechanical application of such a short time-limit for submitting an asylum application must be considered at variance with the protection of the fundamental value embodied in Article 3 of the Convention.*

After approaching UNHCR, the applicant was found to have reasonable fear of persecution based on her membership in a social group of women who have transgressed social mores. The applicant attempted to have her case further reviewed by Turkish judicial authorities following the decision of UNHCR. She submitted additional materials to the appeals board, such as a report by Amnesty International on the inhuman treatment of women accused of adultery in Iran, however the submissions were deemed immaterial and her application was dismissed. This decision not only violated international and regional law but was in violation of Turkish law guaranteeing judicial review and remedy for nationals and foreigners. The European Court of

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Human Rights ruled that domestic authorities failed to evaluate the applicant’s case based on the substance of her fears, relying solely on a strict interpretation of the legality of the claim. Turkey violated Article 3 of the ECtHR on the grounds that the applicants’ deportation could reasonably result in cruel, inhuman, or degrading treatment. The state was also found in violation of Article 13, for its failure to apply rigorous scrutiny to the applicants’ claims. The applicant was granted refugee status and subsequently resettled to a third country by UNHCR.

*Jabari v. Turkey* has created precedent for future European Court of Human Rights asylum cases in which the states’ failure to properly investigate claims are equated with the potential violation of the prohibition of cruel, inhuman, or degrading treatment. The ruling concentrated on promoting state responsibilities in protecting individuals’ basic human rights and the effect of refoulement to one’s country of origin. The application of Article 3 of the ECtHR has been expanded through case law to include procedural rights, such as judicial review and suspension of deportation.243 In this specific case, the applicant’s claims were based on the reasonable fear of persecution for her membership in a social group related to her gender and its implications for her fair treatment in her home country. Transgressions of gender social norms in her home country were proven to often result in cruel, inhuman, and degrading treatment or death. The fact that she had passed Turkey’s legal limit for submitting an asylum application was unimportant as the substance of her claim was unequivocal. Cases should therefore be analyzed on a substantive rather than procedural basis. The case is representative of the need for consistency between international and domestic law. Turkey’s strict application of domestic law was found in contradiction to the claimant’s basic rights. We can therefore argue that the protection of individual’s human rights enshrined in international and regional law and norms supercedes domestic application of law, especially when those laws put people at risk of abuse.

2. **N v. Sweden (2010)**

N and her husband X arrived in Sweden in 2004 and immediately applied for asylum and residence permits based on the persecution the couple faced for her husband's political affiliation in Afghanistan. N’s husband was a politically active member of the communist party in Afghanistan and had been arrested twice for his political affiliation. After his second release, the couple moved to Kabul where fundamentalists had come looking for X with the alleged intent of

243 Martin, pg. 71
killing him. N’s job as an educator of women made her an additional target for fundamentalists. The couple fled to a family member who assisted in paying a smuggler to transport them to Sweden. Upon arriving in Sweden, N’s husband stated that he was suffering from anxiety, sleeplessness, and aggressive behavior.\textsuperscript{244}

The couple’s applications were rejected in 2005, due to the alleged lack of sufficient evidence authenticating their endangerment upon return to their home country. N appealed the decision and argued that she had separated from her husband and would face persecution upon her return. She argued that cultural prohibitions of separation and divorce in her country of origin would put her in danger of abuse. The complainant claimed that X’s family and her own family had disowned her, which would lead to maltreatment. The Migration Board and appeals court rejected N’s asylum claim because the claimant had not formally divorced from her husband. They argued that she had not yet broken from Afghan tradition and would not risk persecution. N's order of deportation became enforceable and she applied for a residency permit on humanitarian grounds, which was also denied. She applied for a divorce from her husband in 2008, claiming they had been separated since 2005. The court denied the request as she had no legal right to reside in Sweden. She attempted to have her case re-evaluated on account of the worsening situation in Kabul, claiming she would be viewed as an adulterer and would face punishment upon return. N submitted a letter from the UNHCR regional office stating that Afghan women who had been separated or divorced are at a heightened risk of persecution due to prevailing social mores and the reliance on male household protection. The complainant’s application was denied again as having failed to present any new evidence of importance.\textsuperscript{245} The claimant submitted additional information regarding her relationship with a Swedish man, with whom she lived since 2009. The state was accused of violating Article 3 (prohibition of torture, cruel, inhuman, or degrading treatment) of the ECtHR.


\textsuperscript{244} European Court of Human Rights. Application no. 23505/09. “N v. Sweden” 2010. paragraphs 6-9
\textsuperscript{245} Ibid. paragraph 21
Promises of the World.” Each of these documents detail the subjugation and persecution of Afghan women in domestic law, public, and private life. The state confirmed that the situation in Afghanistan was difficult for women, however they continued to maintain the stance that there were inconsistencies in the complaint and a lack of substantial evidence that she would face persecution. The court noted that states have the right to expel immigrants as long as doing so did not violate their treaty obligations. Similar to other cases analyzing the legality of return, the court discussed how the situation in Afghanistan was not enough to establish the applicant’s risk of persecution. There must also be evidence that she specifically faced danger upon refoulement. As to the inconsistencies in the claim, the court cites Collins and Akasiebie v. Sweden and Matsuukhina and Matsuukhin v. Sweden, as evidence of other asylum cases in which complainants failed to properly explain lack of evidence for claims and were thus dismissed by the court. The complainant must therefore present appropriate evidence that their specific situation would result in a violation of Article 3 upon return, as was the case in N. v. Finland and NA v. United Kingdom. In these cases, the court based its analysis on the overall situation for individuals of that specific group and whether there is systematic abuse towards that group in violation of Article 3. In the current case, the complainant is a member of the social group of separated/divorced woman. The court compared the complainant’s situation, mutatis mutandis, to individuals that convert to Christianity from Islam and are faced with the risk of deportation to their Islamic home country. The comparison relies on a life change for the applicant in the country of attempted asylum. The life change is contradictory to social mores in the home country, thus putting the applicant at increased risk of abuse if returned.

Being that the complainant was denied the ability to legally divorce her husband by Swedish authorities, Afghanistan’s Shiite Personal Status Law applies, requiring women to comply with their husband’s sexual requests and obtain permission to leave the home and participate in public life. The complainant’s husband can invoke the personal status law, or in light of her relationship with a Swedish man, accuse the complainant of adultery, resulting in the death sentence. Even if the complainant’s husband allowed the complainant to obtain a legal divorce, the reports previously cited detail the social stigma and limitations imposed on women

246 Ibid. paragraphs 34-37
247 Ibid. paragraph 53
248 Ibid. paragraph 53
249 Ibid paragraph 19, See Reza Mohammadi v. the Netherlands and Razaghi v. Sweden
who do not have direct male supervision. Given this information, the court ruled that the overall situation for separated/divorce in Afghanistan was dire enough to constitute a violation of Article 3 upon return. The state was held legally accountable for potentially putting N at risk based on a life change that occurred in the host country. Similar to *Jabari v. Turkey*, the complainant’s membership in a social group comprised of women that transgressed social norms put her at risk of persecution and potentially in danger of cruel, inhuman or degrading treatment. The case is important in the development of our understanding of state legal accountability as the complaint’s claim was not granted based on previous incidence of abuse in the country of origin but rather on a life change that would make return dangerous. The state was therefore responsible for protecting the claimant’s safety and wellbeing in the assurance of her basic human right to be free from cruel, inhuman, or degrading treatment related to her decisions as a woman.

### 3. Seferovic v. Italy (2011)

The present case concerns the unlawful detention of a woman from Bosnia-Herzegovina pending her deportation from Italy. The claimant was detained despite being having been in a fragile medical and mental health state. Italy failed to recognize this and alter their course accordingly. The case is representative of a refugee that feared persecution upon return to her home country, while she also faced issues related to SGBV while in the country of asylum. The applicant’s claim was not centered on her immigration status at the time of the abuse, but rather the illegality of treatment experienced at the hands of host country authorities. In filing the complaint, the claimant argues that regardless of her immigration status, her residency in the host country entitles her to the same basic rights as nationals of that country.

Mediha Seferovic, a woman from Bosnia-Herzegovina, applied for refugee status in Italy on September 14, 2000. Her application was not accepted nor forwarded to the commission because of technical issues with the application. On September 26, 2003 the applicant gave birth to a child, who was rushed to the hospital on November 6 and later died. Following the death of her child, Ms. Seferovic and her husband were escorted to the police station because they did not present legal immigration paperwork at the hospital. On November 11, she was issued an order of deportation and was transferred to a holding facility where she was examined by a

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doctor and found in fine health. Her appeal for the order of deportation was initially denied and reevaluated in December. The court found her detention illegal as the rejection of her status was never communicated to the applicant nor her lawyer and she believed her status remained pending. The complainant’s detention was also illegal according to Italian law as it prohibits detention for 6 months after having given birth due to the delicate physical and mental health state of the new mother. On March 10, 2006 the Rome Civil Court granted Ms. Seferovic refugee status. The state was accused of violating Article 5 sections 1 and 5, the right to liberty and security of person of the ECHR.\(^{251}\)

The state contested the charges primarily because the complainant’s lack of proper immigration documentation justified detention. Italy emphasized that they had behaved appropriately because once the domestic court dismissed the order of detention. The state also claimed that the claimant had not been detained over the legal limit.\(^{252}\) The state cited the case of *Saadi v. the United Kingdom*, where the detention of an Iraqi asylum applicant was found to have not violated Article 5 of the ECHR as the complainant lacked appropriate immigration documentation. The cases of *Chahal v. United Kingdom* and *Bodanovski v. Italy* were similarly cited for their attention to the legal time limit for detaining an individual without formal charges.\(^{253}\) Counsel argued that despite precedent in detaining individuals without legal status, the complainant’s status as having recently given birth nullified the detention as well as the order of deportation for at least 6 months. The court reviewed the circumstances of the case and deemed it admissible because there were no recourse mechanisms for the complainant to seek damages in the Italian legal system.\(^{254}\) The cases of *Amuur v. France* and *Scott v. Spain* were cited by the court in order to solidify that it is the state’s obligation to prevent deprivation of liberty through arbitrary detention. The court emphasized that any decision made by domestic courts within the scope of Article 5 must comply with the procedural and substantive rules established by existing law. Domestic courts must therefore comply with domestic law regarding detention liberties regardless of status or risk violation of the European Convention. The court cited asylum and non-asylum cases in proving this responsibility ie. *Benham v. the United*

\(^{251}\) Ibid. pg. 1
\(^{252}\) European Court of Human Rights. Application no. 12921/0. “Seferovic v. Italy.” 2011. paragraph 34
\(^{253}\) Ibid. Paragraph 33-34
\(^{254}\) Ibid. 36
Kingdom, Giulia Manzoni v. Italy, and Assanidze v. Georgia.\textsuperscript{255} The court decided that despite having set-aside the complainant’s detention, this does not negate the illegality of the preceding detention. The Italian authorities knew that the complainant had recently given birth and should never had ordered her detention in the first place. The state was therefore found guilty of violating the complainant’s right to liberty and security of person and was ordered to pay her non-pecuniary damages.\textsuperscript{256}

This case is dissimilar to those previously reviewed as it not is not directly concerning the prevention of refoulement, but rather is based on an abuse perpetrated in the host country. The abuse investigated related to the state’s violation of one’s right to personal liberty after having arbitrarily detained the applicant. The arbitrary detention of Ms. Seferovic constitutes SGBV because by law she had the right, as having recently given birth, to be free from detention. She had this right due to the physical and mental health stresses a woman faces during and after birth, however this right was violated by Italian authorities. Regardless of her immigration status, she was entitled to this right under the law as a human being present in the country. This case was also unique in the court’s extensive citation of both asylum and non-asylum related judicial precedent in the justification of its decision.

\textbf{D. African Commission on Human and Peoples’ Rights}

The African Commission of Human Rights was established in 1986 and similar to other regional monitoring bodies, has the power to make decisions on state adherence to regional law as well as draw jurisdiction from existing international human rights law and norms.\textsuperscript{257} The court has reviewed eight cases regarding SGBV to date, only one of which directly addresses SGBV for refugee or asylee women. The African Commission of Human and Peoples’ Rights is the only non-judicial body to have made a decision on the widespread abuse of a refugee population in their host country. The state claimed that the refugee population posed a security risk, but the commission believed this as scapegoating the vulnerable population and stood by in holding the state accountable for safeguarding this populations’ basic human rights.

\begin{footnotesize}
255 Ibid. paragraph 37  
256 Ibid. paragraph 59  
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The case of African Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v. Guinea submitted in 2004 is the only SGBV case analyzed in this study that addresses the widespread abuse of a large population of refugees living in a neighboring country. The complaint was made by the Institute for Human Rights and Development in Africa, a pan-African NGO focused on promoting awareness of human rights issues and contributing to the improvement of human rights mechanisms and institutions across the continent.258 This case is representative of the persecution of refugee or asylee populations at the direct disposal or support of the state. The case has set precedents related to the admissibility of cases, prioritization of human rights over security concerns, state responsibility in protecting large displaced populations, and SGBV as a weapon of intimidation.

On September 9, 2000 President Lansana Conte of Guinea issued a proclamation over the national radio sanctioning the arrest and confinement of refugees from Sierra Leone. The speech encouraged discrimination against refugee populations by soldiers and civilians alike. Guinean soldiers responded to the speech by evicting Sierra Leoneans from their homes and camps, looting homes, confiscating properties, and extorting large sums of money from the refugee population. Physical abuse was rampant as mass beating, assault, rape, and torture of refugees resulted in a large number of deaths. Following the speech, refugees were arbitrarily detained on fabricated accusations of membership in rebel groups. Refugee women were targeted in the form of widespread rape and humiliated by strip searches in front of large groups of on-lookers. Sierra Leonean refugees were thus forced to decide whether to remain and face the abuse in their country of asylum, or to return to their home country where civil war continued. Many Guinean soldiers made the decision for the refugee population by forcibly collecting populations and physically putting them on ferries back to Sierra Leone. The Guinean state claimed that due to the increase in armed aggression at the hands of Liberian and Sierra Leonean armed groups the measures taken were justified for national security. The state additionally claimed that there had been no targeting of Sierra Leonean refugees and that there was insubstantial evidence in proving

wrongdoing. The Guinean government was accused of failing to provide protection for refugee populations as is required by law, in turn violating Articles 2 (freedom from discrimination), 4(right to life), 5(freedom from ill-treatment, degrading punishment, or torture), 12(5) (prohibition of mass-expulsion of non-nationals), and 14(right to property).

The case was immediately deemed admissible despite the complainants’ failure to exhaust domestic remedies. In cases in which there are egregious and widespread violations, the African Commission waves the international and regional monitoring body requirement of exhausting domestic remedies. Other cases supporting this precedent are Doebbler v. Sudan and Rencontre Africaine pour la Défense des Droits de l’Homme v Zambia. In Doebbler v. Sudan, a tripartite agreement between Sudan, Ethiopia, and UNHCR resulted in the confiscation of status and forced refoulement of 14,000 Ethiopian refugees living in Sudan. Rencontre Africaine pour la Défense des Droits de l’Homme v Zambia is a case filed by a Senegalese NGO due to the expulsion of 517 West Africans who were allegedly in Zambia illegally. In African Institute for Human Rights and Development v. Guinea, the court ruled that the case was admissible because there was a “life-threatening situation that makes domestic remedies unavailable.” The court also cited the logistical impracticality in requesting such a large number of applicants to file individual complaints in domestic Guinean courts. The body went on to describe that the exhaustion of remedies was already compromised by the nature of the persecution at the hands of authorities tasked with protecting the population. The exhaustion of remedies would require those refugees that decided to flee the abuse in Guinea to return to the country, which would be equally inadvisable.

The commission analyzed the complaint and ruled that Guinea had violated all the charges presented. The commission based the decision on several important factors. The principal being the targeting of Sierra Leonean refugees based on their national identity and the non-differentiation between those seeking refuge and rebel forces. In regards to Article 12(5) of the African Charter, prohibition of mass expulsion of strangers which targets national, racial,

ethnic, or religious groups, Guinea was found guilty of violating the norm of non-refoulement. Under the circumstances, Sierra Leoneans were not given a choice and were forced to avoid persecution in Guinea by confronting persecution in their home country. Discrimination was evident by the widespread sexual violence and assault inflicted on Sierra Leonean women, as well as by the violence, intimidation, and arbitrary detention of refugees on false allegations of membership in rebel groups. The widespread rape and sexual humiliation of women constituted cruel, inhuman, or degrading treatment, in direct violation of the refugees’ dignity. The President’s failure to differentiate between refugees and rebels, and the large scale targeting of Sierra Leonean refugees was ruled as discriminatory because it “it has no legal basis.”

In its ruling, the commission recognized that there are innumerable challenges faced by host countries with large refugee populations, including the implementation of extreme measures in protecting their citizens. However, the protection of citizens should never come at the expense of others’ human rights. As a result of Guinea’s violations, the court ruled for a joint commission of Sierra Leonean and Guinean governments to assess the losses incurred by victims and provide appropriate compensation to those effected. This case is important in setting precedent for holding host countries legally accountable for the mistreatment of the refugee populations housed in their countries. Guinea was held responsible for the violence and abuse incurred despite the refugee populations’ status as non-nationals. In regards to sexual violence specifically, the rape and widespread sexual humiliation perpetrated with the urgings of the state were found to be both discriminatory and constitutive of inhuman treatment. We can thus conclude that in circumstances of sexual violence, the state can be held responsible for directly ordering violence, but also for turning a blind eye to violence as it is occurring.

There are several issues in the application the results of this case to other instances of abuse. In the current case, there is clear evidence of the widespread nature of the crime and the specific condoning of violence towards the refugee population by the state. In other instances of pervasive SGBV amongst refugee women, there is not usually such a clear and public statement made by an authority figure promoting these behaviors. When compared to individual claims of SGBV, the ruling was able to circumvent the barriers experienced in domestic courts such as the fear of social stigma, unequal access to legal remedies, lack of resources to adjudicate claims, untimeliness of proceedings, and discrimination in domestic law. Another issue in applying this

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262 Ibid. Paragraph 69.
case more widely is it discussed SGBV as a crime that was perpetrated amongst other incidents of violence, therefore it was treated more generally within the context of the other violence that occurred. There was no citation of non-refugee related SGBV law or case law as precedent for prosecuting these crimes separately. The involvement of the NGO Institute for Human Rights and Development in Africa was vital in gathering the evidence necessary to field a complaint. In instances of individual abuse, involvement of on-the-ground actors is a necessity in ensuring that refugee women are aware of their rights and have access to the appropriate resources to challenge perpetrators of violence. This case clearly demonstrates that there exist legal mechanisms in holding states accountable for widespread sexual and gender based abuses against refugee women. While the case also reinforces the idea that national security concerns must always be analyzed with the consideration of guaranteeing human rights.

IV. Conclusion

Sexual and Gender based violence is at its core a human rights issue based on unequal power relations and disregard for the fundamental freedoms between genders. Conflict and crises exacerbate these prevailing inequalities leading to an increase in sexual and gender violence by both private and public actors. Refugee women feel this violence more acutely as they lack the formal protection of the state and are subject to the violence associated with disrupted social systems. With the growth of human rights in international law there has been a subsequent growth in law protecting women and girls from violence. This growth has undoubtedly translated to an increase in international, regional, and domestic protections for women. As was analyzed in this study, there exist many legal accountability mechanisms in the form of formal conventions and treaties, as well as normative materials detailing the responsibilities of states in protecting all women from SGBV. The application of these principles to refugee women remains uneven as there continues to be a lack of formal legal mechanisms enforcing state accountability in appropriately protecting refugee women and girls from SGBV. These laws protecting all women are most frequently employed towards refugee women through the interpretation of their provisions by monitoring bodies, IGOs, and other non-state actors.

The spillover of human rights protections for refugee women has witnessed progress over the past 30 years, yet at a slower pace than the developments of overall human rights safeguards. The lack of a specific monitoring body for the Refugee Convention of 1951 and the 1967
Protocol cannot be overstated as it has forced refugee and asylee women to seek redress for wrongdoings elsewhere, resulting in few fora for contesting rights violations. The slow development of refugee specific mechanisms has ebbed even further by the erosion of the refugee regime and the increasingly security centered depiction of refugee populations. This focus on security has redirected state attention from humanitarian need and altered their view of human rights protections as secondary, resulting in xenophobic policies that contradict states’ legal obligations in protecting displaced populations. Protecting one’s population should never come at the expense of others’ human rights. States have been unreceptive to progressive expansions of legal instruments promoting the rights of refugees, thus leaving refugee women and girls more vulnerable to violence. The lack of specific SGBV legal protections for refugee women and the delegitimation of the refugee regime has necessitated refugee and asylee women seek protection elsewhere. IOs and NGOs have become the primary actors in promoting the rights of refugee women and promulgating adherence to refugee protection norms.

UNHCR is the primary agent in promoting refugee protections. Its policies in protecting refugee women from SGBV have progressed over the last 30 years alongside the advancements in international and regional law and norms. The first major area of advancement came after the international community’s recognition that women had specific protection needs and warranted particular attention in international fora. For too long laws had been constructed in view of patriarchal values under the guise of universality. This era challenged these notions and brought women’s voices and lived experiences more to the forefront. UNHCR responded to this by conducting internal programmatic research, creating policy guidelines, and advocating for increased attentiveness to the specific needs of refugee women. The second major area of normative influence followed progresses in humanitarian law in considering sexual violence as criminal and in the acknowledgement of violence against women as a public issue. The recognition of the structural nature of SGBV led to the increased attentiveness of UNHCR to gender based grounds of persecution and the emphasis on state’s responsibilities in upholding due diligence obligations. The most recent area in which refugee women’s protections have been advanced is in the movement from a woman specific discourse to the discussion of gender equality. UNHCR responded to this development by creating its own mainstreaming policy. Although flawed, it reflects an advancement of the consideration of refugee women’s protections from a separate category of rights to the reimagining of existing frameworks with the aim of
integrating women’s needs in a more universalist view of human rights protections. The ability for the organization to operationalize this policy is indicative of the point that IGOs, NGOs, and other non-state actors are important in promulgating norms advancing human rights. Non-state actors thus play a primary role in shaping international law and norms, while their expert knowledge and activism act as mechanisms in enforcing state accountability in upholding SGBV protections. The work of UNHCR in protecting refugee women cannot be understated, however it is important to note that its power is circumscribed by states. This results in the limiting of its overall legal power, but does not limit its ability to continue to advocate and promote enhanced norms of refugee protection. UNHCR is pushing to reframe the way refugee women’s rights and protection are viewed, but it is not alone in promoting these ideals. The cases analyzed in this study do show some positive developments in the recognition that this populations’ legal claims to protection from SGBV should be treated equal to those of any woman.

The growth of judicial and non-judicial monitoring bodies has contributed to the development of a standard of appropriateness in advancing human rights protections. Though by no means perfect, international and regional judicial institutions have increased their accessibility thus contributing to the institutionalization of SGBV protectionist norms. Existing SGBV cases have created a substantial body of jurisprudence for the overall protection of women upon which future developments can be made. State’s legal responsibility has increased with the normalization of the due diligence principle, necessitating more preventative and enforcement measures on their part to protect women from this violence. Additionally, SGBV has moved past the realm of a personal or private matter. It is increasingly been criminalized as a systemic and public issue to be addressed by state judicial bodies. These developments are promising for the further legal and normative development of state accountability for SGBV. The cases analyzed in this study also showed that claims are being analyzed on a substantive basis, rather than focusing on legal technicalities or the status of the applicant. The decisions of monitoring bodies are noting that states cannot sacrifice basic human rights for security concerns, while also emphasizing the universal application of law and human rights custom to all that reside in a territory, irrespective of their immigration status. In these areas there is evident spillover of general human rights protections for refugee populations, as states are being held legally accountable by these mechanisms for violating human rights which do not necessarily pertain to
an individual’s status as refugee, asylee, or asylum seeker. These developments are promising for the further legal and normative development of state accountability for SGBV.

That being said, the number of claims made by refugee and asylee women remains few and the focus of most of the cases is on refoulement, rather than refugee women’s overall treatment in host countries. States are not fulfilling their obligations in protecting refugee and asylee women from SGBV. Existing mechanisms in place encouraging legal accountability are not substantive enough to hold perpetrators accountable for failing to protect displaced populations. There needs to be the further development of the existing human rights monitoring mechanisms to accommodate the claims of refugee and asylee women, as there is seemingly a large gap in their access to legal measures of redress. This is just one level at which there needs to be change in order to protect refugee women and girls. These measures will be unsuccessful if there is no institutional change at both the domestic and international levels. Norms surrounding refugee protection must be reevaluated and law must be reflective of the ideals of universal human rights protections. In their current form international laws are by no means extensive enough to ensure the protection of refugee women and girls from SGBV. State responsibility in this framework is insufficient as accountability has largely fallen on non-state actors such as UNHCR. States must not only acknowledge formal bodies, but must be willing to integrate these principles into legislation, enforcement, and service provision domestically. It will be difficult to create long-term change for refugee women unless underlying societal frameworks are re-envisioned with women in mind. That being said, we should not abandon the existing legal and normative measures protecting refugee and asylee women from SGBV, but challenge them to be more inclusive and reflective of refugee women’s realities.
**V. Appendices**

1. Judicial and Non-Judicial Monitoring Mechanisms

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<th>International Monitoring Mechanisms</th>
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<tr>
<td>Committee Against Torture</td>
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<td>Non-judicial treaty monitoring body</td>
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<td>Committee on the Elimination of Discrimination Against Women</td>
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<td>Non-judicial treaty monitoring body</td>
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<td>Human Rights Committee</td>
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<td>Non-judicial treaty monitoring body</td>
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<td>International Criminal Tribunal for the Former Yugoslavia</td>
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<td>Judicial body</td>
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<td>International Criminal Tribunal for Rwanda</td>
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<td>Judicial body</td>
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<th>Regional Monitoring Mechanisms</th>
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<td>African Commission on Human and Peoples Rights</td>
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<td>Non-judicial treaty monitoring body</td>
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<td>European Court of Human Rights</td>
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<td>Judicial body</td>
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<tr>
<td>European Court of Justice</td>
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<td>Judicial body</td>
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<tr>
<td>Inter-American Commission on Human Rights</td>
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<td>Non-judicial treaty monitoring body</td>
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<td>Inter-American Court on Human Rights</td>
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<td>Judicial body</td>
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2a. International Monitoring Body SGBV Cases

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<th>International Jurisprudence</th>
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<tr>
<td>Case</td>
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<td>Facts of Case</td>
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<td>Ruling</td>
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<td>Source</td>
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<td>Topic Areas</td>
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<tr>
<td>Committee Against Torture</td>
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<td>On October 20 1990 Pauline Muzonzo Paku Kisoki, a woman from Zaire, was</td>
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<td>raped at her home in front of her children by members of the government</td>
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<td>MPR party, for refusing to allow them to host a rally at her restaurant.</td>
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<td>Following the incident she was taken to Makal prison in Kinshasa where</td>
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<td>she was victim to ill treatment and degrading punishment. Everyday</td>
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<td>The committee held that Sweden was in violation of Article 3 (freedom</td>
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<td>from torture or ill treatment) of the Convention Against Torture, which</td>
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<td>prevented states from returning individuals to a country where they were</td>
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<td>at risk of torture or ill treatment. Ms. Kisoki's previous activities</td>
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<td>with the opposition party and the climate of systemic persecution in</td>
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<td>Zaire would pose an immediate risk to her well-being upon return.</td>
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<td><a href="http://www.lawsc.hool.cornell.edu/womenandjustice/upload/Muzonzo-v-Sweden.pdf">http://www.lawsc.hool.cornell.edu/womenandjustice/upload/Muzonzo-v-Sweden.pdf</a></td>
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<tr>
<td>torture, refugee/asylum, custodial violence, sexual violence</td>
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the guards would force the women to dance, beat and rape them. She was detained for 1 year without trial and escaped after her sister bribed a prison official. She escaped to Sweden and requested asylum on November 14, 1991. Her application was denied in both preliminary and appeals on the basis that the political climate in Zaire allegedly no longer posed a risk for Ms. Kisoki. She resubmitted her application twice with evidence from the special rapporteur on Zaire and forensic medical evidence from the Center for Torture and Trauma Survivors in Stockholm.

| A.S. v. Sweden (2000) | A.S., an Iranian woman, applied for asylum status in Sweden on December 29, 1997. Her application was denied. A.S. was not politically active in Iran, however in 1981 her husband, a high ranking official in the Iranian Air Force, was killed during training in unclear circumstances. In 1991, her husband was proclaimed a martyr meaning her and her son would be supported and supervised by the Bonyad-e-Shahid, the Committee of Martyrs. The committee tried to convince widows like A.S. to remarry, however she refused to do so. In 1996, a high-ranking leader of the Bonyad-e-Shahid forced A.S. to marry him by threatening to harm her and her children. She was forced into a mutah marriage, or a short term marriage of 1.5 years, which meant that she did not live with her husband but would be at his disposal for sexual services. In 1997, she fell in love with a | The committee ruled that Sweden was in violation of Article 3 (freedom from torture or ill treatment) of the Convention Against Torture, which prevented states from returning individuals to a country where they were at risk of torture or ill treatment. The commission cited a report by the Special Representative on human rights in Iran which noted that several married women had been sentenced to death by stoning for adultery. | http://www.lawsc hool.cornell.edu/ womenandjustice/ Legal-and-Other-Resources/CAT-Committee.cfm | torture, refugee/asylum, forced marriage, sexual violence |
Christian man and they met in secret, which is forbidden for Muslim women, especially for martyr's widows. Their affair was discovered and she was interrogated by zeinab sisters, women authorities of the revolutionary court, and was transported to her temporary husband's home. Her husband beat her for 6 hours and after 2 days she was released. Prior to the discovery of her affair, A.S. had arranged a visa to visit her sister in Sweden, she left the country in 1997. Since her departure, A.S. was informed by her sister-in-law that she was convicted of adultery and sentenced to death by stoning upon return. She applied for asylum in Sweden and was denied.

| T.A. v. Sweden (2003) | T.A., a Bangladeshi woman, applied for asylum for her and her daughter in Sweden on October 13, 2000. Her application was denied, which was upheld in appeal. Applications for residence on humanitarian grounds and application for a stay of execution of expulsion were also denied. In Bangladesh her and her husband were active members of the Jatiya party. T.A. was arrested for participating in a political demonstration, released, then re-detained by police and members of the opposing party with her 4 year old daughter. At the police station she was physically abused and raped to make her confess the crime of illegal arms trade. She was burned with cigarettes, strung upside-down, and hit with a belt. She was released after signing a document | The committee ruled that Sweden was in violation of Article 3 (freedom from torture or ill treatment) of the Convention Against Torture, which prevented states from returning individuals to a country where they were at risk of torture or ill treatment. The commission elaborated by stating that T.A.'s political affiliation put her and her daughter at immediate risk of torture, as torture of opposition party-members was common amongst state officials in the country. | http://www.lawsc hool.cornell.edu/ womenandjustice/ Legal-and-Other/Resources/CAT-Committee.cfm | torture, refugee/asylum, custodial violence, sexual violence |
stating she would not participate in political activities, sought medical treatment, and was told by family members that the authorities were searching for her. The Swedish migration board held that her allegations cannot be attributed to the state but were rather, acts of individuals. The appeals board also claimed that due to political change in Bangladesh she would not face torture if returned.

| V.L. v. Switzerland (2006) | V.L., a woman from Belarus, applied for asylum with her husband in Switzerland on December 19, 2002. Her husband stood for local election in Belarus in 1995 and in 2000. In a letter to a newspaper he publicly criticized the president of the country. In 2000, he was interrogated by security forces and attacked by four unknown men. He left the country in June 2001 and applied for asylum in Belgium, which was rejected. V.L. remained in Belarus where she frequently taken in for questioning on her husband’s whereabouts. In September 2002, her passport was confiscated by security forces and she fled the country. The couple’s asylum claims were denied in preliminary hearings and in appeals. In 2004, V.L. requested a reevaluation of her case separate from that of her husband as they no longer lived together. She mentioned for the first time that security forces had sexually abused and raped her to illicit information. Following the sexual abuse, she reported the incident and | The committee ruled that V.L.’s past experiences showed that if she were to return to Belarus she would not be protected by authorities and would most likely risk further abuse. Her order of deportation is thus in violation of Article 3 (freedom from torture or ill treatment) of the Convention Against Torture, as it violates the principle of non-refoulement where the individual faces a substantial risk for torture or ill-treatment upon return. The committee also elaborated that V.L.’s failure to report the sexual violence initially was a result of intimidation by her husband and was common among female rape victims, it was therefore not a valid excuse for Swiss authorities to reevaluate her case. | http://www.lawsc hool.cornell.edu/ womenandjustice/ Legal-and-Other-Resources/CAT-Committee.cfm | torture, refugee/ asylum, custodial violence, sexual violence, domestic violence |
received a medical examination substantiating her claims, however rather than investigate the claims she was threatened with mutilation and death by the offending officers. When she told her husband he responded with insults and humiliating remarks and forbade her from mentioning the abuses to Swiss authorities. The migration board refused to reopen or reevaluate her case.

<p>| C.T. and K.M. v. Sweden (2006) | In April 2002, C.T. a Hutu Rwandan citizen and member of the PDR- Ubanyanja party, was arrested for attending a party meeting in Kigali. She was interrogated and raped under threat of execution, and bore a child from the rape. In October 2002, a soldier helped her escape and arrange a flight to Sweden where she claimed asylum. Her son was born in Sweden in 2003. In March 2004, her application for asylum was denied based on lack of credibility and the decision was upheld in appeals. She filed a complaint with the commission on the grounds that her forced return to Rwanda would amount to human rights violations and potentially death. | The committee ruled that her return to Rwanda would constitute a violation of Article 3 (freedom from torture or ill treatment), obligating states to not expel people who risk torture upon return to their home country. As to the credibility of the case, the commission held that torture victims cannot be held to strict standards of accuracy based on the trauma of their experience and the migration board had ignored the admissibility of medical reports following her escape from prison. | <a href="http://ww3.lawsc">http://ww3.lawsc</a> hool.cornell.edu/AvonResources/5034ed102.pdf | torture, refugee/asylum, custodial violence, sexual violence |
| Saadia Ali v. Tunisia (2008) | Saadia Ali, a French-Tunisian dual citizen, was detained in Tunisia after going to a courthouse to retrieve a marriage document for her brother. She was taken into custody, stripped, and beaten unconscious in front of 50 male inmates for criticizing a Tunisian official. She was given a summary hearing without due process or legal counsel and sentenced to 3 months imprisonment for attacking an official. She was examined by a medical professional and contacted a lawyer. The lawyer filed a complaint to the state prosecutor on the ground of torture, but the complaint was rejected. | The committee ruled that the Tunisian authorities' deliberate infliction of severe pain had amounted to torture, therefore they were in violation of Article 1 (torture) and Article 16 (cruel, unusual, or degrading treatment) of the Convention Against Torture. The state was also found in violation of Article 12 (prompt investigation of torture) and 13 (right to fair trial) for failing to properly investigate the claim of torture, and Article 14(right to fair compensation) for failing to provide redress and compensation for torture. The committee recommended compensation to Ms. Ali. | <a href="http://ww3.lawsc">http://ww3.lawsc</a> hool.cornell.edu/ AvonResources/t unisia_t5_cat_29 1_2006.pdf | torture, ill treatment, right to fair trial, access to legal counsel, due diligence |
| Committee on the Elimination of Discrimination against Women | A.T. v. Hungary (2005) | A.T. lived in an apartment with her husband L.F., and her two children-one of whom was disabled. A.T. suffered domestic violence from L.F. for over 4 years, resulting in multiple hospital trips. A.T. could not go to a shelter with her children because none could accommodate her disabled son, there was also no order of protection possible according to Hungarian law. L.F. moved out of their shared apartment in 1999, however continually returned to inflict physical and emotional violence towards A.T. A.T. filed several cases to protect her and her children including, restricting L.T.’s access to the family home, division of property, and criminal proceeding for two severe incidents. All the | The Committee ruled that the state of Hungary failed to protect A.T. and her children, thus violating Article 2a,b,e (promote equality through legislation), Article 5 (eliminate prejudices of sex role stereotyping and prejudice), and Article 16 (equality in marriage and family life). The committee additionally concluded that based on General Recommendation No. 19, gender based violence and domestic violence were considered discriminatory. States that fail to protect private lives through lack of due diligence constitute discrimination. | <a href="http://www.un.or">http://www.un.or</a> g/womenwatch/d aw/cedaw/protoc ol/decisions-views/CEDAW%20Decision%20on%20AT%20v%20Hungary%20E nglish.pdf | discrimination, marital rights, sex and gender stereotyping, domestic violence |</p>
<table>
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<th>Case Study</th>
<th>Summary</th>
<th>Reference</th>
<th>Right to Life Issues</th>
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<tr>
<td>Sahide Goekce (deceased) v. Austria (2007)</td>
<td>Sahide Goekce was victim to domestic violence at the hand of her husband Mustafa Goekce for three years. She had sought help from the police on multiple occasions, resulting in several occasions in which her husband was issued injunctions forbidding him from returning to the family home. These orders were temporary and the husband was known to have violated the orders. The father of Sahide and the husband's brother informed the police that the husband had frequently threatened to kill Sahide, however the police did not file a report or take a statement. On December 7, 2002 Mustafa Goekce shot and killed Sahide in front of their two young daughters.</td>
<td>The state of Austria was ruled in violation of the accused's right to life, physical, and mental integrity under CEDAW Article 1 and General Recommendation No.19. The state was also said to have violated Article 2 (promote equality through legislation) and Article 3 (guarantee women's rights on basis of equality with men) and failed in providing effective domestic remedies in protecting Sahide. The state did not fulfill their obligation to exercise due diligence and appropriately investigate and prosecute the claims of violence.</td>
<td>(CEJIL pg. 367-373)</td>
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<td>Fatma Yildirim (deceased) v. Austria (2007)</td>
<td>Fatma Yildirim was first threatened by her husband, Irfan Yildirim, in July 2003. Yildirim threatened to kill Fatma and continuously threatened her. One month later Fatma left with their 5-year old daughter to live with her eldest daughter. She went back to the family apartment to collect her belongings and her husband assaulted and threatened to kill her again. She reported the</td>
<td>The court ruled similar to the Sahide Goekce v. Austria case. The state of Austria was ruled in violation of the accused's right to life, physical, and mental integrity under CEDAW Article 1 and General Recommendation No.19. The state was also said to have violated Article 2 (promote equality through legislation) and Article 3 (guarantee women's rights on basis of equality with men) and failed in providing effective domestic remedies in protecting Fatma. The state did not fulfill their obligation to exercise due diligence and</td>
<td>(CEJIL pg. 376-381)</td>
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<td>right to life, due diligence, discrimination, domestic violence</td>
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| A.S. v. Hungary (2006) | Ms. A.S., a member of the Roma community, went into labor and required an emergency caesarean section as the fetus had died in the womb. Ms. A.S. was informed immediately and was given two documents: a form consenting to the caesarean section and another handwritten note. The hand-written note had been drafted by the doctor and stated that Ms. A.S. consented to sterilization following the caesarean procedure. Before leaving the hospital Ms. A.S. asked the doctor about the state of her health and when she could try for another child, the doctor then explained the sterilization procedure. Ms. A.S. said she did not understand the document she had signed and said that sterilization, as a form of birth control, was against her devout beliefs.

| The state of Hungary was ruled in violation of Ms. A.S.’s informed consent to medical procedures, Article 21 (right to information on family planning), Article 12(right to appropriate services for pregnancy and post-pregnancy period), and Article 16.1e(right to determine number and spacing of children). This was the first time and international body that held a state responsible for failing to provide a woman with the information necessary and full consent for a reproductive health decision.

| https://www.escr-net.org/caselaw/2009/v-hungary-communication-no-42004-cedawc36d42004 | right to health, right to informed consent for medical procedures, right to information on family planning, right to appropriate pregnancy and post-pregnancy care |
Roma, Catholic beliefs. Ms. A.S. attempted to file a civil claim against the hospital, however it was ruled that because she could not prove that she had lost her reproductive capacity permanently and lacked causation to the conduct of the doctors, the case was dismissed.

<p>| Karen Tayag Vertido v. The Philippines (2008) | In 1996 Karen Tayag Vertido, a Filipino woman, was raped at her place of work by a former President of the Davao City Chamber of Commerce and Industry. Following the rape, Ms. Tayag Vertido received a medical certificate attesting to the incident and filed a police report. The case remained at the trial level from 1997-2005. The author's doctor testified that she was suffering from post-traumatic stress disorder due to the incident. In 2005, the perpetrator was acquitted of the crime based on three principles derived from previous Supreme Court case law: it is easy to make an accusation of rape but difficult to prove it; due to the intimate nature of the crime, the testimony of the complainant must be closely scrutinized; the strength of the prosecution's argument must not be based on the weakness of the defense. The court challenged the credibility of the author because she had ample opportunities to escape and the circumstances of the incident led to doubts by the court. | The committee ruled that the state should not have relied on gender stereotyping of rape and rape victims in denying the author's claims. The state therefore violated Articles 2c.f (right to fair trial and freedom from discrimination) and article 5a (modify social and cultural mores). The committee additionally stressed that a lack of physical resistance to unwanted sexual conduct does not constitute consent to an act. | www2.ohchr.org/english/law/docs/CEDAW.C.46.D18.2008_en.doc | sexual violence, discrimination, fair trial |</p>
<table>
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<th>Case</th>
<th>Summary</th>
<th>Decision</th>
<th>Source</th>
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<td>Abramova v. Belarus, (2011)</td>
<td>On October 10, 2007 Ms. Abramova, a Belarus activist of the “For Freedom” movement, was arrested by police and found guilty of hooliganism. While in detention she was held in a small, unheated cell and was subjected to humiliating comments and acts by prison staff. Ms. Abramova filed complaints with the Prosecutor's office, District Court, Judicial Board, and appeals court, however her complaints were dismissed by each body. The committee ruled that Ms. Abramova's detention in poor unhygienic conditions, in the presence of a male-only prison staff constituted ill treatment and discrimination. The committee found Belarus in violation of article 2a.b.d.e, (discrimination in law), 3 (political, social, economic, and cultural legislative developments to promote equality), and 5 (modify social and cultural mores) in conjunction with Article 1 of CEDAW.</td>
<td><a href="http://ww3.lawsc">http://ww3.lawsc</a> hool.cornell.edu/AvonResources/b elarus_t5_cedaw_ 23_2009.pdf</td>
<td>discrimination, ill-treatment, social and cultural rights, custodial violence</td>
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<td>Alyne da Silva v. Brazil (2011)</td>
<td>Alyne da Silva Pimentel Teixeira, a Brazilian woman of African decent, sought medical care at a local health center after experiencing abdominal pain and nausea related to her pregnancy. The health center misdiagnosed Ms. Teixeira's symptoms and after being treated for different ailments and after having received questioning regarding her lack of prenatal medical records, she passed away on November 16, 2002. Ms. Teixeira's death was not an isolated case. Rate of maternal mortality in Brazil are greatest among indigenous, low income, women of African descent. Brazil claimed that it had provided quality services and had recently prioritized obstetric care in their National Plan for women's policies. In its first case regarding maternal mortality, the committee ruled that the state can be held responsible for the actions of private actors, as all services are subject to regular monitoring and evaluation by the state. Brazil had violated article 2c (discrimination in judicial proceedings) and 12 (right to health) of CEDAW. The committee recommended Brazil ensure effective obstetric care through affordable access to care for all, training of health care professionals, and ensuring compliance to national standards for both public and private institutions.</td>
<td><a href="http://ww3.lawsc">http://ww3.lawsc</a> hool.cornell.edu/AvonResources/ Alyne%20v.%20Brazil%20Decisi on.pdf</td>
<td>discrimination, right to life, fair trial, right to health, right to appropriate pregnancy and post-pregnancy care</td>
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<td>Kell v. Canada (2011)</td>
<td>In 1991 K, an aboriginal woman from the Rae-Edzo community, bought a home from the Northwest Territory Housing Corporation with her partner S. S subjected K to domestic violence and economic abuse over a three year period. S wrote to the NWT housing corporation, without K's knowledge, and requested K's name be taken off the lease for the home, which they</td>
<td>The committee found Canada in violation of Articles 2d.e (discrimination) and Article 16.1h (right to property) of CEDAW, as they were responsible for K's loss of the house. The committee ruled there was no violation of Articles 14 and 15 as there was no proof of discrimination against K for being a rural woman nor was their state prevention of K living in a different residence in the community. The state was recommended to provided proper monetary compensation</td>
<td><a href="http://ww3.lawsc">http://ww3.lawsc</a> hool.cornell.edu/AvonResources/CEDAW-C-51-D-19-2008_en.pdf</td>
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</table>
approved. In 1995, S evicted K from the home and K filed a suit against her previous partner for domestic violence and for fraudulently evicting her from her home. Prior to a decision on the suit S passed away from cancer, leading to a legal battle over ownership of his estate. Her suits and appeals for possession for ownership of the estate were dismissed, the estate was sold, and K was not given any compensation for the costs incurred during the legal process.

<p>| V.K. v. Bulgaria (2011) | V.K., a Bulgarian woman residing in Poland was victim to years of physical and psychological abuse from her husband. After several incidents of physical abuse, V.K. filed for protective measures and financial maintenance from her husband. Upon hearing about the financial order, V.K.’s husband locked the children in a room and started physically abusing V.K. The husband then filed for divorce and full custody of the children. V.K. decided to leave her husband and take her daughter to a shelter, her husband refused to let her see her son. On September 27, 2007 V.K filed an application with the district court pursuant to the Law of Protection Against Domestic Violence, for immediate protection. V.K. was issued immediate protection, but was denied permanent protection. On appeal, this decision was upheld. In May 2009, V.K.’s marriage was dissolved by the court. | The committee ruled that the state violated its positive obligations in supporting V.K. and her children and were thus in violation of Article 2c.d.e.f (discrimination in law), in conjunction with article 1 and Article 5a (modify social and cultural mores), in conjunction with article 16 (marital rights). The state's failure to issue a permanent protection order was considered a discriminatory interpretation of domestic violence and the lack of women's shelter/support services violates due diligence requirements. | <a href="http://www3.law.cornell.edu/AvonResources/bulgaria_t5_ceedaw_20_2008.pdf">http://www3.law.cornell.edu/AvonResources/bulgaria_t5_ceedaw_20_2008.pdf</a> | discrimination, rights of the child, due diligence, social and cultural rights, marital rights, domestic violence |</p>
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<th>Source</th>
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| L.C. v. Peru (2012) | L.C. began to be sexually abused at the age of 11 by a 34 year old man. When she was 13, she became pregnant, and in a state of depression attempted suicide on March 31, 2007 by jumping from a building. She survived the suicide attempt, however required emergency spinal surgery to prevent her from permanent disability. The surgery was postponed due to the risk it posed to the baby, despite a psychological evaluation which showed the baby as the impetus for her suicide attempt and her legal right to a therapeutic abortion. L.C. received spinal surgery on July 11, 2007, 3 months after the accident, however the delay has caused her to be paralyzed from the neck down. | The commission ruled that Peru failed to implement measures that guaranteed L.C. to obtain essential reproductive health services and are thus in violation of Article 1, 2c.f (discrimination in law), 3 (political, social, economic, and cultural legislative developments to promote equality), 5 (modify social and cultural mores), and 12 (right to health) of CEDAW. The committee recommended that Peru review its law and establish a mechanisms for access to therapeutic abortion under conditions of protecting women's physical and mental health, take measures to reduce social and cultural attitudes that prevent equal access to reproductive health services, and provide reparations and rehabilitation for L.C. | http://ww3.lawsc.hool.cornell.edu/AvonResources/CEDAW.C.50.D.2
2.2009_en.pdf | discrimination, right to health, right to information on family planning, social and cultural rights |
| Jallow v. Bulgaria (2012) | J, a Gambian woman, married A.P., a Bulgarian man, in 2007 after J became pregnant. A.P. went back to Bulgaria and recognized the marriage formally in August 2008, allowing J and her daughter to move to Bulgaria. After arriving in Bulgaria, J was subjected to physical and psychological violence by her husband. She was sexually abused, her husband tried to force her to participate in pornographic film/photos, and she was not permitted to leave the home without A.P.’s permission. A.P. also sexually abused his daughter, which was discovered in November 2008, after a home visit by the Child Protection Department, arranged by A.P. to try to convince his wife to stop breastfeeding. The child protection workers | The commission held that Bulgaria had violated Article 1, 2b.c (discrimination in law, including trial standards), 3 (political, social, economic, and cultural legislative developments to promote equality), 5 (modify social and cultural mores, family education), and 16.1c.1d.1f.1g (non-discrimination in marriage including in custody of children) of CEDAW. The commission argued that the state had failed to provide adequate protection for J, sanctioned A.P. for his behavior, discriminated against J as an illiterate woman, and took her claims of domestic violence lightly causing undue physical and psychological trauma for J and her daughter. The committee urged the state to compensate J and to ensure that migrant women have effective access to justice, while also making sure to consider domestic violence claims while determining custody of children. | http://ww3.lawsc.hool.cornell.edu/AvonResources/CEDAW-C-52-D-32-2011_en.pdf | discrimination, rights of the child, domestic violence, fair trial, economic, cultural, and social rights, due diligence |
reported the abuse to the state prosecutor and encouraged J to leave her husband and seek protection, but provided no guidance on where to go. J and her daughter temporarily stayed at a shelter, but were soon discovered by A.P. and convinced to return. State prosecutors denied investigating the domestic violence case as there lacked evidence. A.P. filed an emergency protection order against his wife, J, claiming he was a victim of domestic violence. His request was granted without having interviewed J and he was given custody of their daughter. J repeatedly asked the police about the whereabouts of her daughter as she was concerned for her safety, but was not given any information. J later agreed to a divorce to regain custody of her daughter but was granted no additional protections.

<p>| S. V. P. v. Bulgaria (2012) | S.V.P filed a complaint on behalf of her 7 year old daughter, V.V.P. V.V.P. was sexually assaulted by a neighbor, B, who was eventually prosecuted for sexual molestation. At the time of the prosecution sexual molestation was not considered a serious crime by the law, therefore B was able to enter a plea-bargain upon admitting guilt and received a three year suspended sentence. S brought a civil tort case against B, and was granted 15,000 Euro in damages, however as no state actor was provided to enforce the judgment she was unable to collect the damages. Following the incident, B continues to live in the same vicinity as V.V.P. and | The committee held the state in violation of Article 1,2,a,b,c.e.f.g (discrimination in law, including fair trial standards), 3 (political, social, economic, and cultural legislative developments to promote equality), 5 (modify social and cultural mores, family education), 12 (right to health) and 15 (non-discrimination in court) of CEDAW by failing to uphold their positive obligation in protecting V from sexual violence. The state was also found responsible for failing to enforce proper compensation, her right to health, access to proper rehabilitation services, and further protection from victimization by B. The committee suggested the state to provide appropriate reparations to V, and encouraged amendments to state law to protect them from victimization and promote equal health care protocols. | <a href="http://ww3.lawsc">http://ww3.lawsc</a> hool.cornell.edu/ AvonResources/S VP%20v%20Bulgaria%20(CEDAW).pdf | discrimination, right to health, fair trial, rights of the child, economic, cultural, and social rights, sexual violence/rape |</p>
<table>
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<tr>
<th>V.V.P. was diagnosed with a disability and mental disorder.</th>
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In 2006, R.P.B, a deaf and mute Filipina woman, was raped by a neighbor. Following the incident, R.P.B reported the incident to the police, where she was interviewed by a male cop and asked to sign an affidavit in Filipino, which the author was unable to read. She received a medical examination confirming the abuse. The case was in trial for about 5 years and the defendant was acquitted in 2011 based on previous jurisprudence. The acquittal was made on three presumptions: it is easy to accuse rape, prove rape, and difficult to disprove; the intimacy of the crime of rape necessitates close scrutiny of complainant's claims; the evidence of the prosecution must stand due to its own merits and the sentence cannot be based on the defense inability to disprove the incident. R.P.B was unable to challenge the acquittal due to Filipino law preventing someone from being tried twice for the same crime.

The committee ruled that the state was in violation of Article 1 and 2c.d.f (discrimination in the law, including fair trial standards) of CEDAW for failing to provide equal access to justice and reliance on gender based stereotypes in obstructing justice. The committee ruled that the courts used R.P.B's disability and gender to stereotype the efficacy of her statements, they additionally failed to provide her with proper interpretation as was her legal right. The committee recommended the state provide compensation and free-counseling for R.P.B., while also recommending the state to review its sexual assault laws and criminal proceeding procedures surround rape and other sexual offences.


discrimination, fair trial, rights of the disabled, gender based stereotypes, sexual violence/rape
| **González Carreño v. Spain (2014)** | In 2003, Andrea Gonzalez, a seven year old, was murdered by her father during a court-approved parental visitation. Angela Gonzalez, Andrea's mother, had reported physical abuse by her husband to the police on 30 occasions between 1999 and 2001. Requests for a restraining order were denied and the father refused supervised visitation with his daughter. After killing his daughter, the father committed suicide. Angela Gonzalez brought a suit to the national courts, who ruled in 2011 that the visit regime was sound and dismissed the case. | **The committee ruled that the visitation scheme should have taken into account the context of domestic violence in the family, instead they made a routine decision without analyzing all the facts. The state should have foreseen the visit as posing a danger to the child and adjusted the visitation scheme accordingly. The committee held that Spain had violated Article 2a.d.e.f (discrimination), 5a (modify social patterns promoting discrimination), and 16 (marital rights) of CEDAW for its discriminatory application of law through failing to pay Angela Gonzalez's claims proper attention.** | https://www.crin.org/en/library/legal-database/gonzalez-carreno-v-spain | discrimination, rights of the child, marital rights, social and cultural rights, right to life, domestic violence |
| **Human Rights Committee (ICCPR)** | **Diene Kaba v. Canada (2008)** | Djene Kaba, a Guinean woman, applied for refugee status on the grounds of membership in a social group and domestic violence, in Canada in May 2001. On February 20, 2001 Ms. Kaba's daughter Fatoumata was abducted by two elderly community women in order to perform female genital mutilation to the young girl. The incident was arranged by her husband and when Ms. Kaba prevented the procedure she was severely beaten by her husband. Ms. Kaba and her daughter fled the country in May 2001. The immigration board denied the refugee application and denied her application for a permanent residence visa on humanitarian grounds. Kaba submitted documentation regarding the prevalence of FGM in Guinea as well as letters detailing threats to her life by her husband if the deportation of her daughter were to occur. | **The committee ruled that the deportation of Ms. Kaba's daughter would violate Article 7 (freedom from inhuman treatment) and Article 24 (rights of the child) as it put the daughter at risk of female circumcision.** | http://www3.lawsc.hool.cornell.edu/AvonResources/2010.03.25_Kaba_v_Canada.pdf | FGM, inhumane treatment, rights of the child, asylum/refugees |
| L.M.R. v. Argentina (2007) | The petition was filed by VDA, mother to 20 year old LMR. LMR, an 8-10 year old with a mental disability, was raped by her uncle and became pregnant. In 2006, LMR was brought to Guernica hospital because of complaints of illness and her pregnancy was discovered. LMR filed a police report and requested termination of the pregnancy. According to Argentinian law, abortion is legal in instances of the rape of the mentally disabled. The hospital refused to perform the procedure and referred her to San Martin hospital 100 km away. At San Martin hospital an injunction was issued and judicial proceedings were initiated to prevent the abortion. The juvenile court judge ruled that the abortion should not occur because a wrongful assault should not be met with another wrongful assault. The decision was confirmed in civil court, but overturned by the Supreme Court of Justice of Buenos Aires. Despite permission from the court, San Martin Hospital refused to perform the procedure, as did all other health centers and hospitals. On August 26, 2006 the family arranged an illegal termination. | The committee ruled that forcing LMR to endure a pregnancy caused by rape did not constitute a violation of the freedom from inhuman treatment, however he physical and emotional pain inflicted on a person with disabilities did constitute a violation of Article 7 (freedom from inhuman treatment). Article 17 (right to privacy and family life) was also violated as the decision for the termination should have been kept between the doctor and patient. There was a violation of Article 2 (right to effective legal remedy), as the prolonged judicial process made it necessary for LMR to obtain an illegal abortion. The case was important in that it set precedent for relating the prohibition of abortion to torture or cruel, inhuman or degrading treatment. | http://ww3.lawsc hool.cornell.edu/ AvonResources/ Decision.pdf | inhumane treatment, sexual violence, fair trial, right to privacy/family life, right to health, disabled rights, rights of the child |
| L.N.P. v. Argentina (2007) | L.N.P, a 15 year old Argentinian woman of the Qom ethnic group, was sexually assaulted by three men in October 2003. Following the attack she reported the incident to the police, however she was kept waiting for several hours at the police station and at the medical center. At the medical center L.N.P received vaginal and anal examinations which caused her great pain. After noticing her absence, L.N.P's family searched for her, found out about the assault, and filed an additional report. A judicial investigation was ordered and the three perpetrators were arrested. In November 2003, a social worker was sent to interview L.N.P.'s family/friends inquiring on the author's lifestyle, habits, and morals. Court proceedings opened without giving notice to L.N.P and her family regarding their right to appear as plaintiffs. The trial also was conducted in Spanish, making it difficult for L.N.P. and witnesses to the assault to effectively participate in proceedings. The three perpetrators were acquitted, without notifying the author. She learned of the acquittal 2 years following the ruling, meaning she was unable to appeal the decision. | The human rights committee found the state in violation of Articles 3 (gender equality), 24 (rights of the child) and 26 (freedom from discrimination) by emphasizing her sexual history as part of the trial. They were in violation of Articles 2.3 (right to effective legal remedy) and 14.1 (fair trial) when she was denied access to the courts and denied equal rights in the trial process. The committee additionally ruled that L.N.P.'s treatment at the police station and at the medical center constituted violations of Articles 7 (freedom from inhuman treatment) and 17 (right to private life and family). The committee recommended the state reevaluate its laws regarding the stereotyping and discrimination of sexual assault victims and members of ethnic minority groups, while also improving the access to services for assault victims. | http://ww3.lawsc hool.cornell.edu/ AvonResources/1 610%202007%20 LNP%20v.%20Argentin a_en.pdf | discrimination, rights of the child, fair trial, inhumane treatment, right to private/family life, sexual violence |

Karen Noelia Llantoy Huaman, was 17 years old when she became pregnant. During a prenatal check-up by her doctor, Dr. Perez, notified her that the fetus was anencephalic and recommended termination of the pregnancy. Ms. Llantoy Huaman decided to terminate the pregnancy and reported to the hospital on July 19, 2001 for the operation. Dr. Perez, told the author that she needed written authorization for the termination, which was submitted by her mother. The hospital director responded that the abortion was not approved because it was unlawful, despite the legality of therapeutic abortion in medically necessary instances. A social worker investigating and confirmed the necessity of termination, while a psychiatrist reported the psychologically negative effects the terminal fetus had on Ms. Llantoy Huaman. The child died four days after its birth, causing the author to go into severe depression. Ms. Llantoy Huaman claims there was no administrative or judicial means of challenging the medical personnel's decision.

The committee ruled that the state's refusal to allow the author to obtain a therapeutic abortion caused psychological and physical pain, violating Article 7 (freedom from inhuman treatment) of the covenant. The state's failure to enforce its own laws in permitting lawful abortion violates Article 17 (right to private life and family), while Article 24 (rights of the child) was also violated in the state's lack of medical, and psychological support necessary for a woman in her condition.


http://www.lawsc hool.cornell.edu/ womenandjustice/ upload/K-L-Huaman-v- Peru.pdf

inhumane treatment, fair trial, right to privacy/family life, right to health, rights of the child

International Criminal Tribunal for the former Yugoslavia


The four accused were members of Bosnian governmental forces operating the Celebici prison-camp. They are accused of committing acts of torture, murder, sexual assault, and other acts of cruel and inhuman punishment against detainees.

The Tribunal found the four accused guilty of rape as torture, as they "willfully causing great suffering or serious injury to body or health." This judgment also expanded the idea of command responsibility, whereas military commanders were not the only ones that could be found guilty of war crimes, however civilians with de facto authority can be held equally responsible.


war crimes, torture, custodial violence, sexual violence, state violence
<p>| <strong>Prosecutor v. Anto Furundzija (1998)</strong> | Witness A was arrested by Bosnian forces for her alleged knowledge of Croatian soldiers and taken to a bungalow for interrogation. Furundzija along with Accused B interrogated her and subjected Witness A to acts of cruel, inhuman, and degrading treatment including, physical abuse, sexual violence, mental abuse, public humiliation, and deprivation. Accused B's role was to assault and threaten Witness A, while Furunszija was mainly responsible for questioning the witness. | The court cited other international criminal tribunal's definitions of rape as a form of torture and recognized liability for those aiding and abetting torture. The accused was sentenced to violation of the law or customs of war for torture and outrages upon personal dignity including rape. This ruling expanded legal precedent in marking responsibility for those that not only committed first-hand acts of sexual violence, but directed or were complicit when in their presence. | <a href="http://www.icty.org/x/cases/furundzija/tjug/en/furtj981210e.pdf">http://www.icty.org/x/cases/furundzija/tjug/en/furtj981210e.pdf</a> | war crimes, torture, custodial violence, sexual violence, state violence |
| <strong>Prosecutor v. Kunarac, Kovac, and Vukovic (2001)</strong> | Between 1992 and 1993, Bosnian Muslims were collected and housed in warehouses, schools, and other locations separate from Bosnian serb civilians. The three accused were members of Bosnian Serb military forces stationed in the area of Foca. The women in these encampments described their situations as destitute where they were deprived of water, food, and sanitary conditions as well as under threat of constant violence and intimidation. Witnesses reported the systematic violence and rape of women by Bosnian Serb soldiers. Witnesses attempt to notify local authorities on the conditions, however they were ignored. The three accused were indicted on crimes against humanity (torture, rape, enslavement) and war crimes (torture and rape). Kovac was charged with war crimes (rape and outrage upon personal dignity) and crimes against humanity (enslavement and rape), and Vukovic was charged with crimes against humanity and war crimes for torture and rape. The case set precedent for the consideration of rape as a crime against humanity. | The court charged Kunarac with crimes against humanity (torture, rape, enslavement) and war crimes (torture and rape), Kovac was charged with war crimes (rape and outrage upon personal dignity) and crimes against humanity (enslavement and rape), and Vukovic was charged with crimes against humanity and war crimes for torture and rape. The case set precedent for the consideration of rape as a crime against humanity. | <a href="http://www.icty.org/x/cases/kunarac/tjug/en/kunj010222e.pdf">http://www.icty.org/x/cases/kunarac/tjug/en/kunj010222e.pdf</a> | war crimes, torture, custodial violence, crimes against humanity, state violence |</p>
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<th>International Criminal Tribunal for Rwanda</th>
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| **Prosecutor v. Akayesu (1998)** | In April 1994, hundreds of displaced Tutsi civilians sought refuge at the bureau communal center. Women civilians were regularly taken by armed militia or communal police and subjected to violence and sexual violence on the premises. Jean-Paul Akayesu was aware these acts were occurring and was thus complicit in their continuation. | Jean-Paul Akayesu was convicted of genocide and crimes against humanity for acts of sexual violence due to his inaction and omissions in relation to the mass rape, forced public nudity, and sexual mutilation of the displaced Tutsi women. This case set precedent for considering rape as a crime against humanity defining it as, "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence, which includes rape, is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive."
<p>| <strong>Prosecutor v. Laurent Semanza (2003)</strong> | Laurent Semanza was the mayor of the Bicumbi commune, and was accused of crimes related to the intent to destroy the Tutsi population as an ethnic or racial group. It was alleged that the accused organized, directed, and personally participated in attacks resulting in bodily/mental harm, sexual violence, and death. In regards to sexual and gender based violence, Semanza is accused of inciting a crowd to rape a group of Tutsi women before killing them in April 1994. | The court ruled that Semanza was guilty on 8 counts of crimes against humanity, including murder, rape, torture, persecution, and extermination. |
| <a href="http://www.ictrcaselaw.org/docs/doc37512.pdf">http://www.ictrcaselaw.org/docs/doc37512.pdf</a> | crimes against humanity, sexual violence, torture, state violence |</p>
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<th>Case Description</th>
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<td>Prosecutor v. Mikaeli Muhimana (2005)</td>
<td>Mikaeli Muhimana was a conseiller in the Kibuye prefecture. He murdered several Tutsi civilians and disemboweled a pregnant woman in front of others in order to to see what the fetus looked like. Muhimana was indicted on counts of genocide, rape as a crime against humanity, and murder as a crime against humanity. Muhimana was convicted of rape as a crime against humanity for personally having committed the act, but for also abetting the act on a systematic scale and murder as a crime against humanity.</td>
<td><a href="http://www.internationalcrimesdatabase.org/Case/120/Muhimana/">Link</a></td>
<td>crimes against humanity, genocide, sexual violence</td>
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<td>Special Court for Sierra Leone</td>
<td>During the conflict in Sierra Leone between 1991 and 2002, civilian populations were terrorized by government and rebel forces. Young women that were captured by rebel forces were often forced into becoming wives for rebel soldiers. The accused were high ranking members of the Revolutionary United Front. They were indicted on multiple counts of war crimes and crimes against humanity, including forced marriage. The court ruled that the accused were guilty of war crimes and crimes against humanity. This decision was the first time an international criminal tribunal tried convictions for forced marriage as a crime against humanity, separate from sexual slavery.</td>
<td><a href="http://www.internationalcrimesdatabase.org/Case/793/Sesay-et-al/">Link</a></td>
<td>war crimes, crimes against humanity, forced marriage, state violence</td>
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## 2b. Regional Monitoring Body SGBV Cases

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<tr>
<td>African Commission on Human and Peoples’ Rights</td>
<td><strong>Malawi Association and Others v. Mauritania (2000)</strong></td>
<td>Between 1986 and 1992 northern Mauritanian populations and southern black Mauritians experienced an escalation of violence. Southern politicians and activists were arbitrarily detained by Northern government forces and the Northern military invaded the south. The military imposed martial law, continued to detain dissidents, and intimidated the populace. Incidents of torture and mass rape were also reported.</td>
<td>The commission ruled that Mauritania had violated Articles 2 (freedom from discrimination), 4 (right to life), 5 (freedom from ill treatment, degrading punishment and torture), 6 (right to liberty and security of person), 7.1 (right to fair trial), 9.2 (freedom of expression), 10.1 (freedom of association), 11 (freedom of assembly), 12.1 (freedom of movement), 14 (right to property), 16.1 (right to physical and mental health), 18.1 (right of the family) and 26 (independence of courts) of the African Charter. The state was recommended to compensate victims and reevaluate policies.</td>
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<td>Democratic Republic of Congo v. The Republics of Burundi, Rwanda and Uganda (2003)</td>
<td>Since August 2, 1998, armed forces of Rwanda, Uganda, and Burundi have committed gross violations of the human rights of citizens in the Democratic Republic of Congo. These violations included beatings, maiming, torture, mass killings, and mass rape. In the claim, the DRC noted two incidents that specifically targeted women and girls. On August 24, 1998 over 856 people were massacred in Kasika. Most of those found were women and children. The women had all been raped before they were killed, and were cut open from their genitals to their abdomen. The other incident was the claim that Rwandan and Ugandan forces aimed at spreading sexually transmitted diseases to Congolese women through rape. Two thousand HIV/AIDS</td>
<td>The accused countries did not deny their atrocities however argued that the state cannot be held accountable for violations committee within a group, with rape being an example. The commission cited Article 60 and 61 of the ACHPR in responding that the mass rape of women and girls as a systematic tool of violence is in direct violation of Article 76 of the First Protocol of the Geneva Conventions, noting special protections for women and girls from ill-treatment and indecent assault. The commission also ruled that the states had violated Articles 2 (freedom from discrimination), 4 (right to life), 5 (freedom from ill treatment, degrading punishment and torture), 12.1 and 2 (freedom of movement and freedom to leave and return to country), 14 (right to property), 16 (right to physical health and medical attention), 17 (right to education, right to culture), 18.1 and 3 (discrimination against women), 19 (freedom from discrimination), 20 (right to self-determination), 21 (right to free</td>
<td>discrimination, right to life, inhumane treatment, freedom of movement, right to property, right to health, right to education, right to self-determination, economic, cultural, social rights, right to territorial integrity, state violence, sexual violence</td>
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positive Ugandan soldiers were allegedly sent to eastern Congo and ordered to commit mass rape to spread the disease. On October 5, 1998 a Rwandan officer ordered several of his soldiers to rape young girls in the village they were stationed. disposal of wealth and natural resources), 22 (right to economic, social, and cultural development), and 23 (right to territorial integrity, prohibition of interstate violence) of the African Charter. The commission recommended the states withdraw their troops from DRC immediately and pay adequate reparations.

<p>| Doebbler v. Sudan (2003) | On June 13, 1999 8 female students of the Nubia Association at Ahlia University were arrested at a picnic for violating &quot;public order.&quot; The students requested authorization for the picnic in advance, however were arrested and beaten by security agents. The report claims that the women were arrested for girls kissing, wearing trousers, dancing with men, sitting with boys, talking boys, and crossing legs with men. All 8 women were sentenced to fines and/or lashes. The commission ruled that the state violated Article 5 of the African Charter, in that the punishment for the supposed crimes, lashing, was disproportionate and constituted ill treatment. The commission requested Sudan ban the punishment of lashing. | <a href="http://hrlibrary.umn.edu/africa/cmcases/236-2000.html">http://hrlibrary.umn.edu/africa/cmcases/236-2000.html</a> | inhuman treatment, arbitrary detention |</p>
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<th>African Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v. Guinea (2004)</th>
<th>On September 9, 2000 President Lansana Conte of Guinea issued a proclamation over the national radio sanctioning the arrest and confinement of refugees from Sierra Leone. The speech went on to encourage discrimination against these refugee populations. Guinean soldiers responded by evicting Sierra Leoneans from their homes and camps, looting homes, and confiscating properties. Physical abuse became rampant as mass beatings, assaults, torture, and shootings of refugees forced them to return to Sierra Leone. Refugees approached by soldiers would be searched and detained without due cause, based on false accusations. Additionally, the president's speech instigated widespread rape and humiliation of refugee women.</th>
<th>The commission noted that refugees do provide untold stresses on host countries, however states have an obligation at upholding these populations' rights and protections. Guinea was found in violation of articles 2 (freedom from discrimination),4 (right to life),5 (freedom from ill treatment, degrading punishment and torture),12(5)(prohibition of mass expulsion of non-nationals) and 14 (right to property) of the African Charter. They were also found in violation of Article 4 (non-discrimination) of the OAU Convention on Refugees in Africa. The commission recommended the formation of a joint commission to assess the losses of the refugee population and establish appropriate compensation.</th>
<th><a href="http://www.lawsc">http://www.lawsc</a> hool.cornell.edu/ womenandjustice/upload/African-Commission-African-Institute-v-Guinea.pdf</th>
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<td>Interights (on behalf of Husaini and Others) v. Nigeria (2005)</td>
<td>In December 2002, Safiya Yakuba Husaini, a nursing mother, was sentenced to death by stoning on charges of adultery. On January 19, 2001 Bariya Magazu, a single woman, was sentenced to 100 lashes for committing &quot;zina&quot; or sexual intercourse before marriage, and false accusation for failing to prove that the three accused men had forced her to commit sexual acts. Sentences of amputation and cane strokes were also imparted for theft and consumption of alcohol. There is no appeals process available to those convicted of crimes in Sharia court and the death penalty has been applied for crimes that by law are not punishable by death.</td>
<td>The commission filed an urgent appeal with President Olusegun Obasanjo of Nigeria, to suspend implementation of Sharia statutes pending investigation by the commission. The Secretary General of the African Union similarly approached President Obasanjo to suspend Sharia law. The President replied that he could not suspend Sharia law, however could ensure the right to life and human dignity in the country, as well as protection for those mentioned in the claim. The claimant withdrew its complaint.</td>
<td><a href="http://www.lawsc">http://www.lawsc</a> hool.cornell.edu/ womenandjustice/ Legal-and-Other-Resources/Africa n-Commission-on-Human-and-Peoples-Rights.cfm</td>
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<td>right to life, fair trial, inhuman treatment</td>
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<td><strong>Zimbabwe Human Rights NGO Forum v. Zimbabwe (2006)</strong></td>
<td>In February 2000, a constitutional referendum was held in which a majority of Zimbabweans voted against the government's newly drafted constitution. Citizens of the ruling party, ZANU (PF) went on a campaign of abuses against those they suspected as members of the opposition. Included in this campaign of violence was murder, targeted rape, and the destruction of property. On October 6, 2000 the government granted blanket clemency to the perpetrators, while excluding incidents of murder, rape, theft, possession of arms and several other charges. Despite the exclusions, very few accused had been prosecuted for their crimes.</td>
<td>The state attempted to argue that because the perpetrators were non-state actors, they could not be held liable for the violation of these rights. The court ruled that due to the October 6th clemency and the state's &quot;pervasive non-action&quot; that the state did not uphold its obligations of due diligence in protecting and prosecuting the abuses. The commission noted that a, &quot;state can be held complicit whether it fails to systematically provide protection from violations from private actors who deprive any person his/her human rights.&quot; The state was thus in violation of Articles 1 (adherence to charter) and 7(right to fair trial) of the African Charter.</td>
<td><a href="http://www.lawsc">http://www.lawsc</a> hool.cornell.edu/ womenandjustice/ upload/Zimbabwe-Human-Rights-NGO-Forum-v-Zimbabwe.pdf</td>
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<td><strong>Sudan Human Rights Organisation &amp; Centre on Housing Rights and Evictions (COHRE) v. Sudan (2009)</strong></td>
<td>Two complaints were filed by the Sudan Human Rights Organisation and the Centre on Housing Rights and Evictions against the state of Sudan for the systematic use of rape and sexual violence against women in the Darfur region. The Sudan Liberation Movement were a paramilitary group that upon issuing a political declaration clashed with state forces. The state responded with violence against suspected rebel forces. Gross abuses of human rights occurred, such as the rape and sexual assault of women and girls. These attacks were targeted towards black indigenous African tribes, the Fur, Marsalit and Zaghawa tribes. The state denied the submission of the case as they claimed that domestic legal remedies</td>
<td>The commission ruled the case admissible and found the state guilty of violating numerous Articles of the African Charter. The state was found in violation of Articles 1 (member states adopt legislative measures to promote charter), 4 (right to life), 5 (freedom from slavery, ill treatment, degrading punishment, and torture), 6 (freedom from arbitrary detention), 7 (right to fair trial and legal counsel), 12 (freedom of movement), 14 (right to property), 16 (right to health and medical care), 18 (right of the family), and 22 (right to economic, social, and cultural rights) of the African Charter. The commission recommended the state: conductive investigations to human rights violations in Darfur, reform legislative and judicial frameworks, prosecute those responsible for violations, and ensure proper domestic remedy for violation.</td>
<td><a href="http://www.lawsc">http://www.lawsc</a> hool.cornell.edu/ AvonResources/S udan%20Human %20Rights%20O rganisation%20&amp; %20Centre%20Ho n%20Housing%2 0Rights%20and%2 0Evictions%20(COHRE)%20v.%20Sudan.pdf</td>
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<td>Case</td>
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<td>EIPR and Interights v. Egypt (2013)</td>
<td>On May 25, 2005 the Egyptian Movement for Change, Kefaya, organized a demonstration regarding a referendum aimed at amending the constitution in regards to multi-party elections. Four women journalists, who were not necessarily reporting or participating in the protests, were beaten, sexually assaulted, and threatened by supporters of Mubarak outside the Press Syndicate. Riot police and authorities did not intervene to stop the abuse, protect the women, nor did the police agree to report the incidents. Upon filing charges, their cases were dismissed due to inability to identify perpetrators.</td>
<td>Article 1 (member states adopt legislative measures to promote charter), 2 (freedom from discrimination), 3 (equality before the law), 5 (freedom from ill treatment), 9.2 (express opinions under the law), 16 (right to health), 18.3 (discrimination against women), and 26 (independence of courts) of the African Charter. This was the courts’ first ruling citing violation of non-discriminatory law.</td>
<td><a href="http://www.achpr.org/files/sessions/10th-eo/comunications/323.06/achpreos10_232_06_eng.pdf">http://www.achpr.org/files/sessions/10th-eo/comunications/323.06/achpreos10_232_06_eng.pdf</a></td>
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<td>Case of Airey v. Ireland (1979)</td>
<td>Mrs. Johana Airey sought separation from her husband on grounds of physical and mental cruelty to her and her children. When she sought legal remedy she could not find legal assistance to appear in court.</td>
<td>Article 6 (access to the court) and Article 8 (respect for family life) of the ECtHR as Ms. Airey was not given access to qualified legal council and the denial of this access violated the state’s positive obligations in providing access to protective family life measures.</td>
<td><a href="http://www.lawsc.hool.cornell.edu/womenandjustice/upload/Airey.PDF">http://www.lawsc.hool.cornell.edu/womenandjustice/upload/Airey.PDF</a></td>
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**European Court of Human Rights**

- Ill-treatment, discrimination, freedom of expression, right to health, fair trial, due diligence, sexual violence
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<tr>
<th>Case</th>
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<th>Source</th>
<th>Strengths</th>
<th>Weaknesses</th>
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<td>X and Y v. The Netherlands (1985)</td>
<td>Mr. X's daughter, Y, was born with a mental handicap. She lived on the premises of a private-home for disabled children. On December 15, 1977 Y was raped by the directress' son-in-law Mr. B. The following day, Mr. X went to the police to file a complaint and to initiate criminal proceedings on his daughter's behalf. A police officer at the station attested to Y's mental condition and the need for her father to file the complaint on her behalf. A court ruled not to press charges given Mr. B did not repeat the offense within 2 years. In appeals court the case was dismissed, as the court claimed that rape could not be proved because the father's complaint could not substituted for the direct complaint of Y.</td>
<td>The Court ruled that the state had positive obligations under ECHR Article 8 (right to private and family life) in ensuring proper protections and criminal-law provisions. The concept of private life extends to the sphere of relations of individuals between themselves. The state had no clear outline for who could file complaints on behalf of an individual with diminished mental capacity, they were therefore liable for the failure to protect Y. The court ruled that the state provide financial compensation to Y and her family.</td>
<td><a href="http://ww3.lawsc.hool.cornell.edu/AvonResources/CASE%20OF%20X%20AND%20Y%20v.%20THE%20NETHERLANDS.pdf">Link</a></td>
<td>Right to family and private life, rights of the disabled, due diligence, sexual violence</td>
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<td>Open Door and Dublin Well Woman v. Ireland (1992)</td>
<td>Open Door Counseling and Dublin Well Woman Centre, Irish NGOs that provide health counseling to Irish women, were subject to an injunction posed by the Irish courts, which prevented them from providing information to women concerning abortion facilities outside of Ireland.</td>
<td>The European Court of Human Rights ruled that the restraint on sharing information was not proportional, and violated the organizations' rights under Article 10 (freedom of expression), which includes the freedom to impart information and ideas without interference by public authorities.</td>
<td><a href="http://www.refworld.org/country,,ECHR,,IRL,,3ae6b7020,0.html">Link</a></td>
<td>Freedom of expression, right to information on family planning</td>
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<td>Aydin v. Turkey (1997)</td>
<td>A 17-year old Kurdish woman was detained, beaten and raped by Turkish security forces. After the incident she went to the public prosecutor's office with her father and sister-in-law to report the mistreatment. Their testimonies were recorded, Ms. Aydin was sent to be medically examined by Dr. Akkus, who had no prior experience examining rape survivors. The doctor was instructed to find out if the young woman had lost her virginity, and reported that the young girl's hymen had been torn and she had severe bruising on her thighs. She was sent for 2 subsequent medical examinations to determine if she had recently lost her virginity. During the investigation her family was subject to continued harassment and threats to withdraw the case. The court ruled that the state violated Article 3 (prohibition of torture) and Article 13 (right to effective remedy). The court stated that the rape of a detainee by state officials is especially abhorrent due to the extent to which the offender can exploit their power against the victim. The court reasoned that the only reason for Ms. Aydin's arrest and detention was the Turkish security forces' need to gain information due to the conflict in the region. Her treatment during detention and her rape by security officials can therefore be interpreted for the same purpose as her initial arrest, constituting torture. Ms. Aydin's right to effective remedy was also violated as the public prosecutor failed to properly investigate her claims of violence and did not perform with due diligence.</td>
<td><a href="http://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/aydin-v-turkey/">http://blogs.lse.ac.uk/vaw/landmark-cases/a-z-of-cases/aydin-v-turkey/</a></td>
<td>torture, sexual violence, custodial violence, due diligence</td>
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<td>Jabari vs. Turkey (2000)</td>
<td>An Iranian woman was arrested in Iran after being caught in public with a married man. She was released from detention and immediately fled to Turkey, illegally. She then tried to flee to Canada using a falsified passport, but was detained by French authorities and sent back to Turkey. Once in Turkey, she was arrested for using a fake passport. She claimed asylum, but was told that she passed the legal time limit of applying for asylum (which is within 5 days of arrival in country). UNHCR recognized her claim on the well-founded fear of persecution upon return to Iran due to the high risk of punishment such as capital punishment, torture, imprisonment, or exile. The Court emphasized the need to seriously consider the risk that deportation could pose for ill-treatment. They concluded that the Turkey had not conducted a thorough investigation of the claims and had stuck to mechanical adherence to law rather than analyzing the substance of the asylum claim, in violation of Article 13 (right to effective remedy). The Court ruled that the claimants deportation would violate Article 3 (protection from inhuman/degrading treatment), therefore the Turkish government was responsible for issuing a stay on her deportation and further investigating her claims of asylum.</td>
<td><a href="http://www.refworld.org/docid/3ae6b6dac.html">http://www.refworld.org/docid/3ae6b6dac.html</a></td>
<td>inhuman treatment, asylum, due diligence, fair trial, state violence</td>
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### Menesheva v. Russia (2000)

In 1999, Ms. Menesheva was arrested and put in an unmarked car by district police, after refusing authorities entry into her home. She was allegedly beaten, insulted, and threatened with rape and violence against her family. Her requests for medical treatment and legal counsel were denied. She was released, rearrested, an subject to similar ill-treatment. She was brought before a judge, without knowing her charge, and sentenced to 5 days detention for resisting arrest. She challenged the order, which was denied. Following her detention she sought medical examination, which found she had extensive bruising. All appeals and subsequent attempts for legal action were denied. In 2003, the sentence was retracted after it was decided the judge had not thoroughly analyzed the evidence to establish her guilt. The office of the Prosecutor General ordered investigation into Menesheva's claims of ill-treatment within 30 days, however there had been no information on the case for over a year.

The court concluded that Russian authorities had violated Article 3, (protection from ill-treatment or degrading punishment), for Ms. Menesheva's treatment in detention as well as the state's failure to prosecute the perpetrators. Article 13 (right to effective remedy) was violated due to the denial of the applicants' right to effective domestic remedy for ill treatment. In addition the court concluded that there was a violation of Article 5.1 (right to liberty and security of persons) due to the arbitrariness of her detention, as well as Article 6.1 (right to fair trial) due to the lack of information regarding charge, as well as the later determined partiality of the judiciary.

http://ww3.lawsc hool.cornell.edu/ AvonResources/ MENESHEVA%20v.pdf

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<th>inhuman treatment, arbitrary detention, access to legal counsel, fair trial, sexual violence, custodial violence, due diligence</th>
<th>inhuman treatment, arbitrary detention, access to legal counsel, fair trial, sexual violence, custodial violence, due diligence</th>
<th>inhuman treatment, arbitrary detention, access to legal counsel, fair trial, sexual violence, custodial violence, due diligence</th>
<th>inhuman treatment, arbitrary detention, access to legal counsel, fair trial, sexual violence, custodial violence, due diligence</th>
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<td>as death by stoning, flogging, or whipping. She lodged a complaint with the Ankara Administrative court against her deportation, which was dismissed. She claimed her removal would put her at risk ill-treatment and that she had no legal remedy to challenge the decision.</td>
<td>The court concluded that Russian authorities had violated Article 3, (protection from ill-treatment or degrading punishment), for Ms. Menesheva's treatment in detention as well as the state's failure to prosecute the perpetrators. Article 13 (right to effective remedy) was violated due to the denial of the applicants' right to effective domestic remedy for ill treatment. In addition the court concluded that there was a violation of Article 5.1 (right to liberty and security of persons) due to the arbitrariness of her detention, as well as Article 6.1 (right to fair trial) due to the lack of information regarding charge, as well as the later determined partiality of the judiciary.</td>
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<td>Y.F. v. Turkey (2003)</td>
<td>On October 20, 1993, Mrs. F was detained in police custody. Following her detention she was examined by a doctor who reported no ill-treatment to her body. She was then sent to a gynecologist to determine if she had anal or vaginal intercourse since being detained. Despite Mrs. F’s refusals, she was forced to undergo the vaginal examination, where it was concluded that no intercourse had occurred. On the same day Mrs. F reported the case to the public prosecutor's office, who did not record her complaints but ordered her release. The court ruled that there had been no legal basis or medical necessity in conducting the examination therefore the state of Turkey was found in violation of Article 8 (protection of private and family life) of the ECtHR due to the violation of her physical and psychological integrity. &lt;br&gt;<a href="https://www.coe.int/t/dg2/equality/domesticviolence/campaign/resources/Y.F.%20v.%20TURKEY_en.asp">https://www.coe.int/t/dg2/equality/domesticviolence/campaign/resources/Y.F.%20v.%20TURKEY_en.asp</a></td>
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<td>M.C. v. Bulgaria (2003)</td>
<td>The applicant alleged that she had been raped by two men on July 31 and August 1, 1995 when she was 14 years old. The investigation following ruled that there was insufficient proof to her having been compelled to have sex. The European Court of Human Rights ruled that due to the national court's dismissal of the complaint on the basis of lack of physical evidence of compulsion, the state of Bulgaria has violated Article 3 (protection from inhuman or degrading treatment) and Article 8 (protection of family and private life) including psychological and physical integrity. The state was also ruled to have failed to fulfill its positive obligations in punishing rape and sexual assault through criminal legal proceedings. &lt;br&gt;<a href="http://www.refworld.org/cases.ECHR.47b19f492.html">http://www.refworld.org/cases.ECHR.47b19f492.html</a>, (pg. 165-174)</td>
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<td>Siliadin v. France (2005)</td>
<td>A 15-year old girl of Togolese origin, had served as an unpaid servant for several years and her passport was confiscated, preventing her fleeing. This is the first case of human trafficking considered by the European Court of Human Rights. It was ruled that the State of France did not have the criminal- legislation in force to afford the applicant with sufficient and effective protections against her servitude, or compulsory labor. The state of France was therefore in violation of Article 4 of the ECHR, stating that no one shall be held in slavery, servitude, or be required to perform forced or compulsory labor. &lt;br&gt;<a href="http://ec.europa.eu/anti-trafficking/legislation-and-case-law-case-law/siliadin-v-france-application-no-7331601">http://ec.europa.eu/anti-trafficking/legislation-and-case-law-case-law/siliadin-v-france-application-no-7331601</a></td>
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right to family and private life
inhuman treatment, family and private life, due diligence, fair trial, sexual violence
Human Trafficking, slavery
<p>| <strong>Tysiac v. Poland (2007)</strong> | Mrs. Tysiac, a visually impaired Polish woman, sought grounds to terminate her pregnancy based on medical advice from several physicians that the physical exertion would pose a major risk to her sight and to her health. She received a certificate stating this information, which was taken as permission to proceed with the abortion. When she attempted to have the abortion, the physician at the hospital determined that her medical conditions were not grounds to terminate the pregnancy. Following the birth, her eyesight and overall health deteriorated rapidly. She lodged a complaint against the hospital doctor, however the district court dismissed the case. | The European Court of Human Rights ruled that the government of Poland failed to uphold the applicant's right under Article 8, of the ECHR guaranteeing right to private life, physical and psychological integrity. The ruling was based on the government's failure to provide an effective procedure through which the applicant could appeal the doctor's refusal to grant permission for the abortion. | <a href="http://www.refworld.org/docid/470376112.html">http://www.refworld.org/docid/470376112.html</a> | right to family and private life, right to family planning, right to health |
| <strong>Kontrová v. Slovakia (2007)</strong> | Ms. Kontrova filed a report against her husband on November 2, 2002 for repeated physical and psychological abuse. Following the incident, her husband made her withdraw the report. On December 26, a relative and the applicant herself called emergency services because her husband had a gun and was threatening to kill the children and himself. The police removed Ms. Kontrova from the home but did not move the children and did not file a formal criminal complaint against the husband. On December 31, 2002 the husband killed the two children and himself. Criminal proceedings were initiated against all the officers that failed to provide adequate protection and file formal. The court held that Slovakia was guilty of violating Article 2 (right to life) for failing to take positive action in protecting her children and Article 13 for failing to take appropriate legal measures in providing effective remedy to violence. Authorities failed to fulfill their duty in protecting Ms. Kontrova and her family, while also denying her effective remedy in initiating criminal proceedings. | <a href="http://ww3.law.school.cornell.edu/AvonResources/Kontrov%C3%A1%20v%20Slovakia,%20European%20Court%20of%20Human%20Rights,%202007_International%20law,%20domestic%20and%20intimate%20partner%20violence,%20murder.pdf">http://ww3.law.school.cornell.edu/AvonResources/Kontrov%C3%A1%20v%20Slovakia,%20European%20Court%20of%20Human%20Rights,%202007_International%20law,%20domestic%20and%20intimate%20partner%20violence,%20murder.pdf</a> | right to life, rights of the child, due diligence, domestic violence |</p>
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<th>Relevant Link</th>
<th>Rights Involved</th>
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<td>Bevacqua and S. v. Bulgaria (2008)</td>
<td>Mrs. Valentina Bevacqua filed for divorce in 2000 and left her home with her young son, based on allegations of domestic violence. She was granted the divorce in 2001, along with a court determination of custody. Before she received formal custody she experienced incidents of physical and psychological abuse, as her husband repeatedly attempted to take his son from her care and use intimidation to prevent their divorce. The court proceedings were riddled with delays and unrecognition of her claims of abuse. Bulgarian law ranks abuse on a spectrum from light to medium harm, determining the procedure for criminal proceedings. Her case was continuously delayed due to the government's claim that she had not taken the initiative to privately prosecute her husband's abuse.</td>
<td>The Court ruled that the national court's failure to adopt interim custody measures in a timely manner and the insufficient measures in reaction to the father's behavior had adversely impacted the mother and child. The state was therefore in violation of article 8 of ECHR, in that it failed to protect the private life, physical and/or medical integrity of the applicant.</td>
<td><a href="http://hrlibrary.umn.edu/research/bulgaria/BEVACQUA.pdf">http://hrlibrary.umn.edu/research/bulgaria/BEVACQUA.pdf</a></td>
<td>right to family and private life, due diligence, fair trial, domestic violence</td>
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<td>Juhnke v. Turkey (2008)</td>
<td>Juhnke claims she was arrested by Turkish military on charges of terrorism related to PKK activity. She was handed over to gendarmes custody. While in custody she was forced to undergo a gynecological examination, was stripped naked, and</td>
<td>The Court ruled that Juhnke's treatment was in violation of Article 8 of the ECHR (respect for private and family life), which also guarantees the preservation of physical and moral integrity.</td>
<td><a href="http://ww3.lawschool.cornell.edu/AvonResources/CASE%20OF%20JUHNKE%20v.%20TURKEY.pdf">http://ww3.lawschool.cornell.edu/AvonResources/CASE%20OF%20JUHNKE%20v.%20TURKEY.pdf</a></td>
<td>right to private and family life, custodial violence</td>
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<td><strong>Maslova and Nalbandov v. Russia (2008)</strong></td>
<td>Ms. Maslova was a witness for a murder case and was called in for questioning at the district police station. After questioning by two policemen and denial of any involvement in the murder, she was beaten, raped, and forced to perform other sexual acts, until she confessed to involvement. She was then handed to prosecution authorities, where she was denied release. Following interrogation, she was repeatedly raped by the prosecution authorities, and released at 10 pm. In the afternoon, Ms. Maslova's mother and Mr. Nalbadov arrived at the police station and were detained for questioning. Nalbadov alleges that he was suffocated and beaten by prosecution authorities. Ms. Maslova attempted to file a complaint against the perpetrators and a criminal investigation was opened, and quickly closed due to lack of proof of guilt of the accused. Evidence collected during the brief investigation was found to have a 99.9999% genetic match with Maslova on the prosecution authorities' premises. It was later uncovered that two of the accused were supported by their parents who were judges of regional courts.</td>
<td>The court ruled that the state had violated Article 3 (prohibition of torture, inhuman or degrading treatment) for the state's failure to protect Maslova from torture and the inhuman/degrading treatment inflicted on Nalbandov. The court similarly ruled that the state's lack of effective investigation also posed a violation of Article 3.</td>
<td><a href="http://ww3.lawsc">http://ww3.lawsc</a> hool.cornell.edu/ AvonResources/C hamber%20judg ment%20Maslova %20and%20Nalb andov%20v.%20 Russia%2024.01. 08.pdf</td>
<td>torture, inhuman or degrading treatment, fair trial, due diligence, sexual violence, custodial violence</td>
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<td>Salmoanoglu and Polattas v. Turkey (2009)</td>
<td>Two women, Salmanoglu and Polattas, were detained by Anti-Terrorist Turkish authorities on suspicion of membership of the Workers’ Party of Kurdistan (PKK). After being detained both were forced to undergo virginity testing, at which both were deemed virgins. The applicants alleged that they were mistreated in police custody, having been insulted, deprived of food, water and sleep, and sexually harassed and beaten. Several days after being taken into custody both women were sent for virginity testing again, which they refused on the grounds of ill-treatment. Following their release, the women launched prosecution against those officers that interrogated and detained them. In court, they did not discuss the full extent of their ill-treatment due to intimidation by the police. Both applicants were found to have post-traumatic stress disorder and depressive disorders. The court ruled that Turkey was in violation of Article 3 (prohibition of torture, inhuman, or degrading treatment) of the ECHR as state officials carried out acts considered inhuman and degrading. The state of Turkey also failed to carry out a full investigation of the claims, further violating the ill-treatment clause.</td>
<td><a href="https://www.cejil.org/sites/default/files/legacy_files/Summaries%20of%20Jurisprudence%20Gender-based%20Violence.pdf">https://www.cejil.org/sites/default/files/legacy_files/Summaries%20of%20Jurisprudence%20Gender-based%20Violence.pdf</a>. Pg. 210-218</td>
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<td>Opuz v. Turkey (2009)</td>
<td>Opuz and her mother were repeatedly abused and threatened by Opuz's husband and her husband's father. The husband and father were at one point indicted for attempted murder of the women, but they were both acquitted. The abuse continued until the husband's father killed the victim's mother. He was tried and convicted of murder, but because good behavior during the trial his sentence was mitigated and he was released on parole. The court ruled that the state of Turkey was responsible for violating Article 2(right to life), Article 3(prohibition of torture, inhuman, or degrading treatment), and Article 14 (prohibition of discrimination) for failing to both protect the victim and her mother from domestic violence, and for failing to implement the necessary criminal proceedings in punishing the perpetrators.</td>
<td>(<a href="http://www.law.school.cornell.edu/womenandjustice/Legal-and-Other-Resources/European-Court-for-Human-Rights.cfm">http://www.law.school.cornell.edu/womenandjustice/Legal-and-Other-Resources/European-Court-for-Human-Rights.cfm</a>)</td>
<td>right to life, inhuman or degrading punishment, due diligence, custodial violence</td>
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<td>Sandra Jankovic v. Croatia (2009)</td>
<td>Sandra Jankovic was removed from her flat, which she shared with multiple other tenants in 1999. After several years of legal proceedings, Kankovic regained possession of the flat in 2003. Upon entering the flat she was assaulted. Following the incident she attempted to press criminal charges, however they were dismissed by domestic courts.</td>
<td>The court ruled that the state violated Article 8 (right to family and private life) of the ECtHR by failing to protect Jankovic’s physical and moral integrity, applying the principle form X and Y v. the Netherlands. Jankovic had exhausted all legal remedies.</td>
<td><a href="http://ww3.lawsc">http://ww3.lawsc</a> hool.cornell.edu/ AvonResources/C ASE%20OF%20 SANDRA%20JANKOVIC%20v. %20CROATIA.pdf</td>
<td>right to private and family life</td>
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<td>E.S. and Others v. Slovakia (2009)</td>
<td>E.S.’s husband was convicted of ill-treatment, violence, and sexual abuse against her and their daughters, and was sentenced to 4 years in prison. Prior to his imprisonment, E.S. filed an interim measure preventing him from entering their flat, which was denied pending final divorce proceedings. The constitutional court upheld the decision on the grounds that their had been no violation of her rights as she didn’t apply for such an order. The constitutional court did hold that the lower court did not take appropriate measures to prevent the ill-treatment of her children, but did not award compensation. Following introduction of new legislation, she filed orders to prevent her husband from entering the flat and for sole tenancy, which were both granted. In the meantime, E.S. was forced to move with her and her children.</td>
<td>The court ruled that there had been a violation of Articles 3 (prohibition of inhuman, or degrading treatment) and 8 (right to private and family life) of the ECtHR. The court elaborated by saying the state lacked adequate protections and domestic remedies to ensure the safety of the family.</td>
<td><a href="http://ww3.lawsc">http://ww3.lawsc</a> hool.cornell.edu/ AvonResources/C hamber%20judg ment%20E.S.%20and%20Others%20v.%20Slovakia%202015.09.09.pdf</td>
<td>inhuman/degrading treatment, right to private and family life, rights of the child, due diligence, sexual violence, domestic violence</td>
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<tr>
<td><strong>Hajduová v. Slovakia (2010)</strong></td>
<td>Mrs. Hajdouva and her children were repeatedly verbally and physically assaulted by her husband. She filed a formal complaint and he was convicted and sentenced to psychiatric treatment. The psychiatric hospital failed to treat her husband and he was released. Upon release he verbally threatened Mrs. Hajduova and her lawyer, who filed criminal complaints based on the husband's previous conviction. The district court arranged for his treatment at a different institution. She filed a complaint with the Constitutional Court claiming the violation of her right to liberty and security, and fair trial. The complaint was rejected on the grounds that she should have pursued action for physical integrity before the lower courts.</td>
<td>The court ruled that the state had violated Mrs. Hajduova's Article 8 right to private and family life, in accordance with their positive obligations under the charter. The lack of measures taken by domestic authorities and failure to properly punish her husband despite his history of violence and well-founded fear of continued violence similarly violated this article.</td>
<td><a href="http://ww3.lawsc.hool.cornell.edu/AvonResources/Hajduov%C3%A1%20v.%20Slovakia,%20European%20Court%of%20Human%20Rights,%202010_International%law,%20domestic%20and%20intimate%20partner%20violence.pdf">http://ww3.lawsc.hool.cornell.edu/AvonResources/Hajduov%C3%A1%20v.%20Slovakia,%20European%20Court%of%20Human%20Rights,%202010_International%law,%20domestic%20and%20intimate%20partner%20violence.pdf</a></td>
<td>right to private and family life, due diligence, domestic violence</td>
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<td><strong>N. v. Sweden (2010)</strong></td>
<td>N and her husband X arrived in Sweden in 2004 and immediately applied for asylum and residence permits, on the grounds of her husband's political affiliation with the Afghan communist party. The couple's applications were rejected in 2005 because the couple did not provide sufficient evidence that their lives were endangered upon return. N later appealed the decision and additionally argued that she had separated from her husband and would face persecution upon her return due to culture prohibitions of separation and divorce in her country. She claimed that X's family and her own family had disowned her, which would lead to persecution. The asylum claim was rejected by the</td>
<td>The court ruled that there had been a violation of Article 3 (prohibition of ill treatment or degrading punishment). N's deportation to Afghanistan, given her situation as a separated woman and the cultural values and difficult environment for women in Afghanistan, would put her at risk of ill-treatment.</td>
<td><a href="http://ww3.lawsc.hool.cornell.edu/AvonResources/CASE%20OF%20N.%20v.%20SWEDEN.pdf">http://ww3.lawsc.hool.cornell.edu/AvonResources/CASE%20OF%20N.%20v.%20SWEDEN.pdf</a></td>
<td>inhuman/degrading treatment, asylum</td>
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Migration Court and in appeals in 2007, as the court claimed there was lack of evidence of persecution. N's claims were similarly ruled as unsubstantiated based on changes in Afghan law. N's order of deportation became enforceable, therefore she applied for a residency permit, which was also denied. She applied for a divorce from her husband in 2008, claiming they had been separated since 2005. The court denied the request as she had no legal right to reside in Sweden. She tried to have her case re-evaluated by the court due to the worsening situation in Kabul, claiming she would be considered for having committed adultery and would be punished upon return. She submitted a letter from the UNHCR regional office stating that Afghan women who had been separated or divorced are at a heightened risk of persecution due to prevailing social mores, and the reliance on male household protection put separated women at high risk. Her application was denied again.

Rantsev v. Cyprus and Russia (2010)

Oxana Rantseva was trafficked from Russia to Cyprus to work in a cabaret. Upon attempting to leave, she was tracked down by her employer and later found dead outside the apartment of the employer's associate. Her father pressed Cypriot authorities to release information regarding her autopsy and filed a formal complaint for an investigation into his daughter's death. Her father claims he never received the autopsy

The court ruled that both Cyprus and Russia were in violation of Article 4 of the ECHR (prohibition of human trafficking), as they failed to uphold their positive obligations in protecting and preventing the trafficking of Ms. Rantseva. The court found Cyprus liable for not protecting Ms. Rantseva from being trafficked, unlawfully detained, and failing to properly investigate her death. Russia was found liable for failing to adequately investigate how Ms. Rantseva had been trafficked across its borders.


human trafficking, due diligence
The court, in his absence, concluded that Ms. Rantseva's death had been an accident and no one was responsible for her death. When Ms. Rantseva's body was returned to Russia her father requested an autopsy and further investigation into the death. The Russian autopsy was inconsistent with the Cypriot autopsy, therefore a back and forth ensued between the two authorities. Cyprus agreed to reopen the case pending additional evidence of foul play, however none was presented and the case was left closed.

### A. v. Croatia (2011)

<p>| A's husband, B, repeatedly physically abused her and her daughter. B was clinically diagnosed with PTSD, anxiety, and paranoia. In 2005, B was indicted temporarily on charges of family violence then released. Several other minor charges were charged against B such as making death threats, domestic violence, and violating restraining order. These charges, which included indictment, were never enforced. A requested additional protective measures in the form of a prohibition on harassing and stalking a victim of violence, following an incident in which a private investigator was hired by B to track A's whereabouts. This request for additional protection was denied. | The court ruled that the state had violated Article 8 of the ECtHR (right to private and family life) for its failure to institute effective protection and enforcement for A and her daughter. It was unclear if B had undergone the state mandated psychiatric treatment required by the national court. The court added that A's case should have been viewed as a whole, rather than as separate proceedings in order to provide proper protection. | <a href="http://www3.lawsc">http://www3.lawsc</a> hool.cornell.edu/AvonResources/C ASE%20OF%20A%20v.%20CRO ATIA.pdf | right to private and family life, due diligence, domestic violence, rights of the child |
| V. C. v. Slovakia (2011) | In August 2003, V.C., a Romani woman underwent a Caesarean section to deliver her second child. During hospitalization, V.C. was sterilized. Medical personnel had informed the applicant that her next child would likely kill her or the child, therefore at the height of labor she told staff, “do what you want to do.” (pg. 3) V.C. alleges hospital staff insisted she sign a consent form for sterilization, without informing her of what the procedure entailed. After learning the procedure was not medically necessary V.C. experienced physical and psychological trauma due to being ostracized within her community. V.C. exhibited signs of false pregnancy, received psychological treatment, and divorced her husband with partial reasoning being her infertility. V.C.’s attempts at pressing legal charges were all dismissed. | The court noted that sterilization is never a lifesaving procedure and cannot be performed without full and informed consent of the patient. The court ruled that Slovakia violated Article 3 (protection from inhuman or degrading treatment) without consideration of alternative methods of contraceptive available to the applicant and the historical and widespread practice in the country of pushing the sterilization of Roma women. Slovakia was also ruled to have violated Article 8 of the ECHR (right to respect for private and family life) in failing to provide her with the appropriate protection/information regarding her reproductive health. | <a href="http://ww3.lawsc">http://ww3.lawsc</a> hool.cornell.edu/ AvonResources/C ASE%20OF%20 V.C.%20v.%20SLOVAKIA.pdf | inhuman or degrading treatment, right to private and family life, right to family planning |
| Ebcin v. Turkey (2011) | Asye Ebcin, a Turkish teacher, was attacked in the street on her way to work by two individuals who threw acid in her face. She was unable to work for 1 1/2 years and had to undergo extensive surgery. She submitted her claim with a report by the Turkish Human Rights Foundation which claimed that 143 teachers had been killed in south-east Turkey between 1984-1991, with at least half by Worker's Party of Kurdistan (PKK) members. Her early claims against the perpetrators were dismissed, with the aggressors only having been arrested 6 years after the attack. | The court did not hold Turkey responsible for Ms. Ebcin's claim that they violated Articles 3 and 8 by failing to protect her from the attack, as there was no proof that she individually was threatened or intimidated. The court did rule that the state's untimeliness in enacting administrative and criminal proceedings failed to provide adequate protection and remedy for the crime, thus violating Article 3(protection from inhuman or degrading treatment) and Article 8 (right to private and family life). | <a href="http://ww3.lawsc">http://ww3.lawsc</a> hool.cornell.edu/ AvonResources/C hamber%20Judg ment%20Ebcin% 20v.%20Turkey %2001.02.2011.p df | inhuman or degrading treatment, right to private and family life, due diligence |</p>
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<thead>
<tr>
<th>Case Title</th>
<th>Description</th>
<th>Country</th>
<th>Violation</th>
<th>Source</th>
<th>Rights of the Child</th>
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<tr>
<td>I.G. v. the Republic of Moldova (2012)</td>
<td>A 14-year old girl was raped by an acquaintance and after reporting the incident to the police, the authorities failed to investigate her claims and used the argument that they could not prove her resistance to the act, therefore it could not be corroborated.</td>
<td>Republic of Moldova</td>
<td>Article 3 (protection from inhuman or degrading treatment) of the ECHR</td>
<td><a href="http://www.lawsc.hool.cornell.edu/womenandjustice/Legal-and-Other-Resources/Europe-an-Court-for-Human-Rights.cfm">Link</a></td>
<td>inhuman or degrading punishment, sexual violence, due diligence, rights of the child</td>
</tr>
<tr>
<td>P.M. v. Bulgaria (2012)</td>
<td>The applicant was raped at a party when she was 13 years old and immediately informed the police. Criminal proceedings were initiated twice and were both dismissed, on the third attempt both perpetrators were found guilty but relieved due to expired limitation period.</td>
<td>Bulgaria</td>
<td>Article 3 (prohibition of inhuman or degrading treatment), of the ECHR</td>
<td><a href="http://www.lawsc.hool.cornell.edu/womenandjustice/Legal-and-Other-Resources/Europe-an-Court-for-Human-Rights.cfm">Link</a></td>
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<td>Kalucza v. Hungary (2012)</td>
<td>Kalucza's attempted to have her partner, Gy. B, evicted from her place of residence following the dissolution of their relationship. She had lodged several complaints of rape, assault and harassment against him, he was acquitted four times and convicted twice, with a quick release. On several of these occasions Kalucza had also been found guilty of disorderly conduct and bodily harm and her requests for restraining orders against her ex-partner were dismissed based on her supposed misbehavior. Over the course of several months the applicant was attacked by her ex-partner, however there was inaction by Hungarian authorities.</td>
<td>Hungary</td>
<td>Article 8 (right to private and family life) of the ECHR as authorities had taken insufficient measures in protecting the applicant from violence. The authorities were said to have drawn out the restraining order process, while the purpose of this order is to provide immediate protection for those at risk of violence.</td>
<td><a href="http://www.lawsc.hool.cornell.edu/womenandjustice/Legal-and-Other-Resources/Europe-an-Court-for-Human-Rights.cfm">Link</a></td>
<td>right to private and family life, due diligence, domestic violence</td>
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</table>
D.J. v. Croatia (2012)

DJ was raped by a colleague at work. The police did not conduct interviews with the applicant, others at the scene, nor did they investigate the scene of the alleged rape. The judge of the case dismissed the investigation due to DJ's intoxication and alleged disruptive behavior, making her testimony unreliable.

The court ruled that Croatia was in violation of Article 3 (protection from inhumane or degrading treatment) and Article 8 (right to private and family life). The court substantiated the ruling on a procedural basis, as the state courts' ruling was based on the premise that the claim was inadmissible due to the applicants' status as under the influence of alcohol and the applicants' allegedly disruptive behavior. Authorities are still obligated to perform a thorough investigation regardless of the state of the applicant. The case adds to the court's jurisprudence by refining the concept of rape as ill-treatment and the positive obligations of the state in punishing and investigating rape claims.

B.S. v. Spain (2012)

B.S., a Spanish woman of Nigerian origin was allegedly verbally and physically abused by police officers on two separate occasions when she was stopped and questioned regarding her activities as a prostitute. Following the second incident, B.S. had sought medical care at the hospital. B.S. filed a complaint at police headquarters, however the proceedings were discharged on the basis of insufficient evidence. She appealed on the basis that the treatment was discriminatory, however this was also dismissed.

The court ruled that there was not enough evidence to prove inhuman or degrading treatment, however the insufficient and ineffective investigation of the claims warranted a violation of Article 3 (protection from inhuman or degrading treatment) of the Convention. The court also ruled that the state was guilty of violating Article 14 (protection from discrimination) in conjunction with the procedural aspect of Article 3, due to the courts' lack of consideration to the possibility of discrimination and the lack of attention to the vulnerable status of the applicant as a woman of African origin working in the sex trade.

Söderman v. Sweden (2013)

Eliza Söderman discovered at the age of 14 that her stepfather had attempted to film her naked through use of hidden cameras. Eliza's mother reported the incidence to authorities who prosecuted the stepfather for sexual molestation. The stepfather was acquitted because he had no intention of the applicant knowing about the film. After appealing the court concluded that the

The court ruled that Sweden had violated article 8 of the ECHR (right to private and family life), as the state failed to provided effective remedy to prosecute her stepfather's violation of her personal integrity. The court concluded that Swedish law as it stood, provided no protection against this type of violation. Sweden amended its law in 2005, proving that the previous version of their sexual molestation law was insufficient in providing protection.
acquittal stands as there is no general provision under Swedish law prohibiting the filming of an individual without their consent.

Izci v. Turkey (2013)

In March 2005, Izci was allegedly attacked by police officers following her participation in Women's Day demonstrations. Police allegedly started hitting demonstrators and sprayed them with tear gas. Izci was left partially unconscious following the incident. Following the attack on demonstrators Izci submitted a written request for investigation and requested medical examination. The medical exam revealed large bruising and recommended she not work for 5 days. She lodged a formal complaint with the Governor which was dismissed as she did not mention a specific incident that could implicate the Governor. In December 2005, the prosecutor's office filed an indictment and accused 54 police officers of causing injuries to 49 victims. The charges were dropped in 2011 on account of the statute of limitations.

The court found the state in violation of Article 3 in both substantive and procedural aspects, for the inhumane treatment inflicted by authorities, failure of judicial authorities in properly investigating the claims, expediting proceedings, and charging the perpetrators of violence. The court also ruled that there was a violation of the applicant's right to peaceful assembly due to the excessive use of force by law enforcement. The state was requested to enact measures to prevent similar offenses in the future.


inhumane or degrading treatment, right to assembly, fair trial, due diligence, state violence
| Case of Eremia v. The Republic of Moldova (2013) | Eremia's husband, a police officer, was physically and psychologically abusive towards her in the presence of their two daughters. In July 2010, Eremia petitioned for a divorce and in August, Eremia's husband was fined and given a formal warning by authorities for his violent behavior. In November 2010, Eremia applied for a protection order which was granted for a 90 day period, she then asked for quicker divorce proceedings, but that was denied. Eremia's husband repeatedly violated his order of protection, and the order was partially revoked on appeal. A criminal investigation was launched, however the investigation was suspended for one year, unless another serious offense occurred. Eremia alleges that she was pressured by other police officers to withdraw the criminal case. | The court found the state in violation of Article 3 (protection from inhuman or degrading treatment) as the court failed to take appropriate measures of protection where there was authoritative knowledge of danger. In addition, the state violated Article 8 (right to private and family life) in regards to Eremia's two daughters, due to the psychological distress the situation put them in and the lack of action on the part of the state. Article 14 (protection from discrimination) was also violated as the state refused to speed up the divorce process, failed to enforce the protection order, and suggested reconciliation by stating that domestic violence was not uncommon amongst spouses. | http://www.lawsc.hool.cornell.edu/womenandjustice/Legal-and-Other-Resources/Europe-an-Court-for-Human-Rights.cfm | right to private and family life, discrimination, due diligence, inhuman or degrading treatment, rights of the child, domestic violence |
| W v. Slovenia (2014) | The applicant, W, was raped by a group of men and brought the case to basic court. The court first acquitted the men and in appeals it was delayed for 10 years due to the emigration of some of the defendants. | The state violated Article 3 (prohibition of inhuman or degrading treatment) of ECHR because they failed to investigate, prosecute, and punish the perpetrators in an effective manner. | http://www.lawsc.hool.cornell.edu/womenandjustice/Legal-and-Other-Resources/Europe-an-Court-for-Human-Rights.cfm | inhuman or degrading treatment, due diligence, sexual violence |
| L.R. v. United Kingdom (2014) | In 2007, L.R., an Albanian woman, was abducted and forced to work as a prostitute in the UK. She managed to escaped and applied for asylum on the basis of the persecution she'd face upon returning to Albania and fear of re-trafficking. Her request was initially denied, and her application was denied for readmission. | The applicant claimed violation of Articles 2, 3, 4, and 8 of the ECHR however the case was dismissed as the UK granted her and her daughter their asylum claim. | http://www.refwo.rld.org/pdfid/4f4fa5352.pdf | asylum, trafficking, settled |
**O’Keeffe v. Ireland (2014)**

Louise O’Keeffe was repeatedly abused by her principal in the 1970’s. She reported the abuse in 1996 and it was found that the principal had abused 21 other students, and was charged on 386 criminal counts of sexual abuse. O’Keeffe filed a civil action against the Minister of Education and the Attorney General on the grounds that they were liable for the actions of their employee. The civil action was dismissed. 

The court ruled that the state violated Article 3 of the ECHR (protection from inhuman or degrading treatment), in a substantive context, as the state failed to fulfill its positive obligations in protecting the applicant from harm. The court additionally ruled that there was a violation of Article 13(right to effective remedy), due to the lack of effective remedy in her pressing for civil action in association with the protection for inhumane treatment. 

http://ww3.lawsc hool.cornell.edu/ AvonResources/ OKEEFFE_v_IR ELAND.pdf

**Seferovic v. Italy (2011)**

Mediha Seferovic, a woman from Bosnia-Herzegovina, applied for refugee status in Italy on September 14, 2000. Her application was not accepted nor forwarded to the commission because of technical issues with the application, it was not dated and it was not authenticated by the lawyer. On September 26, 2003 the applicant gave birth to a child, who was rushed to the hospital on November 6 and later passed. Ms. Seferovic and her husband were ordered to report to the police station because they did not have legal immigration paperwork. On November 11, she was issued an order of deportation and was transferred to a holding facility. She was examined by a doctor and found in fine health. Her appeal for the order of deportation was initially denied, however reevaluated in December. The court found her detention illegal as the rejection of her status was never communicated to the applicant or her lawyer, she believed her status application was

The court found that the detention of Ms. Seferovic, who had recently given birth, to be unlawful and violated Article 5 sections 1 and 5 (right to liberty and security of person) of the European Convention of Human Rights. Italy was required to pay the applicant for non-pecuniary damages.

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<th>European Court of Justice</th>
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<th>arbitrary detention, due diligence refugee/asylum</th>
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still pending. On March 10, 2006 the Rome Civil Court granted her refugee status.

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<th>Inter-American Commission on Human Rights</th>
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<tr>
<td><strong>Raquel Martin de Mejia v. Peru (1996)</strong></td>
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<td><strong>On June 15, 1989</strong> soldiers entered the home of Fernando Mejia Egocheaga and his wife Raquel. Fernando was abducted, then a soldier returned to Raquel's home asking for documents showing her husband's involvement with subversive movement, which she did not have. The soldier raped her and left, returning later that evening to repeat the act. She went to the police station to report the abduction but was turned away by police and provincial authorities. After the discovery of her husband's body, Raquel received death threats to withdraw her complaint.</td>
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<td>The commission ruled that the State was responsible for violating Article 5(protection from humane treatment), Article 8(right to judicial hearing), Article 11 (right to privacy), and Article 25(right to an effective remedy). This case created basis for the ruling that ineffective remedies for crimes of rape could be considered as violation of state obligation in preventing cruel, inhuman, and degrading treatment.</td>
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<td><a href="http://hrlibrary.umn.edu/cases/1996/peru5-96.htm">http://hrlibrary.umn.edu/cases/1996/peru5-96.htm</a></td>
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<td>inhuman and degrading treatment, right to fair trial, right to private and family life, due diligence, sexual violence, state violence</td>
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<th>X and Y v. Argentina (1996)</th>
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<td>Ms. X and her daughter Y were subjected to vaginal inspections by Federal Penitentiary guards when visiting Ms. X's incarcerated husband at a federal Argentinian prison. Ms. X filed a petition saying these vaginal inspections are discriminatory towards women and are degrading.</td>
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<td>The commission ruled that the practice of vaginal inspections violates the Article 11(right to honor and dignity), Article 5(right to humane treatment), Article 17(rights of the family), and Article 19(rights of the child).</td>
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<td><a href="http://www.cidh.org/annualrep/96english/Argentina11506.htm">http://www.cidh.org/annualrep/96english/Argentina11506.htm</a></td>
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<td>inhuman and degrading punishment, right to private and family life, rights of the child</td>
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<td>Maria Eugenia Morales de Sierra v. Guatemala (2001)</td>
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<td>Ana, Beatriz y Cecelia Gonzalez Perez v. Mexico (2001)</td>
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<td>Maria da Penha Maia Fernandes v. Brazil (2001)</td>
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<td>Zoilamérica Narvéz Murillo v. Nicaragua (2001)</td>
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<td><strong>Maria Mamerita Mestanza v. Peru (2003)</strong></td>
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<td><strong>Paulina Del Carmen Ramirez Jacinto v. Mexico (2007)</strong></td>
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<td><strong>X and Relatives v. Colombia (2008)</strong></td>
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<tr>
<td><strong>Marcela Andrea Valdés Díaz v. Chile (2009)</strong></td>
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protection and was given permission by her superior to live separately from her husband. Cardinalli at one point was sentenced to 4 days detention for the violence he inflicted. In 1999, Valdes was sentenced to 10 days in prison for "unbecoming private conduct" allegedly linked to her "friendship "with another police officer. On appeal, her sentence was increased to 15 days detention and she was discharged from the police force. Valdes attempted to challenge the decision as far as the Chilean Supreme Court but the case was dismissed.

| Women and girls victims of sexual violence living in 22 internally displaced persons camps, Precautionary Measures No. MC-340-10 Haiti (2010) | On October 10, 2010 ten groups filed a request on behalf of displaced women following the earthquake in Haiti. The request was for the issue of precautionary measures and recommendation as there had been a systemic increase in sexual violence against women and girls in displacement camps. The request was accompanied by a report detailing the atrocities faced by women. | The IACHR granted the request and in 2011, issued several recommendations: sensitive and integral access to medical care for victims of sexual violence, training of officials to deal with assault/violence, and creation of special police units to address sexual violence. The Commission also recommended that the state involve grassroots organizations in the planning and implementation of program to combat sexual violence. IACHR also recommended emergency contraception for all victims of violence. This decision was unprecedented and provided a basis by which sexual and gender based violence should be handled in crisis situations. | https://cgrs.uchastings.edu/sites/default/files/IACHR-Decision-12-22-English-French.pdf | sexual violence, right to family planning, IDP, recommendation |

<p>| Jessica Gonzales v the United States (2011) | Jessica Lenahan was married to Simon Gonzales and they had three daughters together. In 1996, he began physically and emotionally abusing Jessica and their daughters. After her husband's suicide attempt in 1999, Lenahan filed for divorce. During their separation Gonzales continued his abusive behavior and was | The court ruled that the state violated Article I (right to life), Article 7 (rights of the child), and Article 18 (right to fair trial) of the American Declaration of the Rights and Duties of Man, by failing to act with due diligence in protecting Lenahan and her daughters, thus violating the state's obligation to not discriminate and provide equal protection under the law. The court also ruled that the state violated the right to life of the daughters in conjunction with | <a href="http://www.oas.org/en/iachr/decisions/2011/USPU12626EN.doc">http://www.oas.org/en/iachr/decisions/2011/USPU12626EN.doc</a> | right to life, rights of children, discrimination, fair trial, due diligence, domestic violence |
| Lenahan and her daughters were granted a restraining order, however the police often ignored her calls to enforce the order. In June 1999, Lenahan's daughters and their friend were abducted by Gonzales in front of her home. Lenahan called the police 6 times to report the abduction and violation of the restraining order, each time she was dismissed. She went to the police station and explained that Gonzales had a history of mental instability and had earlier expressed suicidal thoughts. She was dismissed on the grounds that the “father had the right to spend time with his kids”, despite the legal order of protection requiring prearranged meetings between Gonzales and the children. At 3:15 am Gonzales parked his car outside the police station and began shooting. Police returned fire and shot him dead. In his car were his three daughters, shot dead. Upon hearing the news, Lenahan went to the police station and was given no information regarding the state of her children, nor was she later informed about the nature of their death. The death of her children was not investigated. Lenahan filed charges alleging that her rights to due process had been violated by the authorities' failure to enforce the restraining order and properly investigate the death of her children. The case was brought as far as the Supreme Court, where it was ruled that no violation occurred. | Article 7, offering special protections to children. |</p>
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<th><strong>Inter-American Court on Human Rights</strong></th>
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<td><strong>María Elena Loayza-Tamayo v. Peru (1997)</strong></td>
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<td>On February 6, 1993 Ms. María Elena Loayza-Tamayo, a Peruvian professor, was arrested with a relative by the Peruvian Counter-terrorism bureau of the Peruvian National Police Force. She was denounced by another woman and was arrested without warrant. In her 10 days of detention, she was subjected to threats of drowning and raped by security forces, in order to get her to confess her affiliation with the communist party. She was not permitted protective remedy due to her case status as related to terrorism. She was tried by a military court and found guilty, then acquitted by a Naval Court. Following this decision she was reconvicted by the special naval court and her appeals with the Special Tribunal of the Supreme Council of Military Justice were denied. Her case was then referred to civil court where she was tried for terrorism, all her attempts at objecting were dismissed. Ms. Loayza-Tamayo was sentenced to 20 years in prison.</td>
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<td>The court found the state in violation of Article 5 (right to humane treatment), Article 7 (freedom from arbitrary detention), Article 8 (right to fair trial), and Article 25 (right to judicial protection) of the American Convention on Human Rights. The court ordered Peru to release Ms. Loayza-Tamayo from detention and compensate her for damages.</td>
</tr>
<tr>
<td><a href="http://www.corti">http://www.corti</a> dh.or.cr/docs/caso s/articulos/seriec_33_ing.pdf</td>
</tr>
<tr>
<td>right to fair trial, inhuman and degrading treatment, arbitrary detention, sexual violence, custodial violence, state violence</td>
</tr>
</tbody>
</table>

<p>| Between 1987 and 1988 eleven victims were abducted, tortured and murdered by armed men in a white van. It was determined that these armed men were associated with the Treasury police or state military or police institution. |
| The court found the state in violation of Article 1.1, Article 4.1 (right to life), Article 5.1.2, Article 7 (right to liberty and freedom from arbitrary detention), Article 8.1 (right to fair trial, and Article 25 (right to judicial protection) of the ACHR. The state was also found in violation of several articles of the Inter-American Convention to Prevent and Punish Torture: Article 1 (obligation to prevent and punish torture), Article 6(take effective measures to punish torture and inhuman treatment), and Article 9.1 (right to fair trial, right to life, due diligence, state violence). |
| right to fair trial, torture, inhuman and degrading treatment, arbitrary detention, right to life, due diligence, state violence |</p>
<table>
<thead>
<tr>
<th><strong>Case</strong></th>
<th><strong>Description</strong></th>
<th><strong>Decision</strong></th>
<th><strong>Website</strong></th>
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<tr>
<td>Molina-Theissen v. Guatemala (2004)</td>
<td>Marco Antonio Molina Theissen, a 14-year old boy, was kidnapped by the Guatemalan Army. He was detained and never seen again by his family. The Molina Thiessen family was targeted because they were left-leaning academics who opposed the military regime. Before Marco Antonio's abduction, his sister Emma Guadalupe, was detained, where she was subject to physical and sexual abuse, and torture. She escaped and the abduction of her brother was seen as retaliation for this. The family was forced to flee the country and seek asylum following both incidents.</td>
<td>The court found the state in violation of Article 5 (right to humane treatment), Article 8 (right to fair trial), Article 17 (rights of the family), and Article 25 (right to judicial protection) of the ACHR. Additionally the court found the state liable for not upholding Article 1 (obligation to respect rights) and Article 2 (obligation to enact domestic legal effects) in relation to Marco Antonio's family and his sister Emma Guadalupe.</td>
<td><a href="http://www.lawsc">http://www.lawsc</a> hool.cornell.edu/ womenandjustice/ upload/IACtHR- Molina-Theissen- v-Guatemala.pdf</td>
<td>inhuman and degrading punishment, right to private and family life, due diligence, right to fair trial, sexual violence, custodial violence, state violence, rights of the child</td>
</tr>
<tr>
<td>Plan de Sánchez Massacre v. Guatemala (2004)</td>
<td>On July 18, 1982 members of the Guatemalan Army massacred 268 people, most of whom were Mayan, in the village of Plan de Sanchez. During the massacre about 20 girls ages 12-20 were mistreated, raped, and murdered. The massacre was carried out with impunity for the perpetrators, and the victims' next of kin were intimidated and denied justice.</td>
<td>The court ruled that the state was in violation of Article 5 (right to humane treatment), Article 8 (right to fair trial,) Article 11 (right to private and family life), Article 12 (freedom of religion), Article 21 (right to own property), Article 24 (freedom from discrimination), Article 13 (freedom of thought and expression), Article 16 (freedom of association), and Article 25 (right to judicial protection).</td>
<td><a href="http://www.lawsc">http://www.lawsc</a> hool.cornell.edu/ womenandjustice/ upload/IACtHR- Plan-de-Sanchez- Massacre-v-Guatemala.pdf</td>
<td>right to fair trial, discrimination, freedom of religion, freedom of expression, freedom of association, fair trial, right to property, right to private and family life, inhuman and degrading treatment, rights of the child</td>
</tr>
<tr>
<td>De La Cruz-Flores v. Peru (2004)</td>
<td>On March 27, 1990 Maria Teresa De La Cruz Flores was detained and charged with terrorism. She was prosecuted by a court of &quot;faceless&quot; judges and sentenced to 20 years in prison. In 2003, a Peruvian law required the annulment of all terrorism decisions passed by &quot;faceless&quot; judges. De La Cruz Flores, however, remained in detention.</td>
<td>The court ruled that the state violated Article 1 (obligation to respect rights), Article 5 (right to humane treatment, Article 7 (right to personal liberty and freedom from arbitrary detention), Article 8 (right to fair trial) and Article 9 (freedom from ex post facto laws) of the ACHR. The state was ordered to reinstate Flores' previous employment, grant her benefits, and pay reparations for any damages.</td>
<td><a href="http://www.lawsc.hool.cornell.edu/womenandjustice/upload/IACtHR-De-La-Cruz-Flores-v-Peru.pdf">http://www.lawsc.hool.cornell.edu/womenandjustice/upload/IACtHR-De-La-Cruz-Flores-v-Peru.pdf</a></td>
<td>inhuman and degrading treatment, freedom from arbitrary detention, due diligence, right to fair trial, custodial violence</td>
</tr>
<tr>
<td>Lori Berenson-Mejía v. Peru (2004)</td>
<td>On November 30, 1995, Lori Helene Berenson Mejia, an American citizen, was detained on charges of terrorism for her alleged affiliation with the Tupac Amaru Revolutionary Forces. Upon arrest she was interrogated, was not informed of her charges, nor granted access to legal counsel. Prior to hearing the verdict she was forced onto a television broadcast where she was provoked to anger. While held in Yanamayo Prison she was deprived of water, food, medical care, and subjected to poor sanitation standards. In 1996, she was sentenced to life imprisonment, which was later annulled. Then in 2001, she was found guilty of terrorist activities and sentenced to 20 years imprisonment.</td>
<td>The court ruled that Peru violated Article 1.1(obligation to respect rights and non-discrimination) because Ms. Berenson-Mejia nor a lawyer were present at the trial, Article 2 (obligation to provide domestic legal effects), Article 5 (freedom from inhuman treatment) in relation to her detention conditions, Article 7(right to personal liberty and freedom from arbitrary detention), Article 8 (right to fair trial) in the military court, and Article 9 (freedom from ex-post facto laws).</td>
<td><a href="http://www.lawsc.hool.cornell.edu/womenandjustice/upload/seriec_119_ing.pdf">http://www.lawsc.hool.cornell.edu/womenandjustice/upload/seriec_119_ing.pdf</a></td>
<td>inhuman and degrading punishment, due diligence, arbitrary detention, right to fair trial, right to legal access, freedom from ex-post facto laws, custodial violence, state violence</td>
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<tr>
<td>Case Title</td>
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<td>Court Decision</td>
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<td>Miguel Castro-Castro Prison v. Peru (2006)</td>
<td>A transfer of predominantly women prisoners resulted in the death of 45 prisoners, injury of 175 inmates, and cruel, inhuman, and degrading treatment of 322 other prisoners. State conducted transfer of prisoners without notification to prisoners or their next of kin. The State was accused of conducting the transfer as a premeditated attack on the transferred prisoners. Women prisoners were victim to specific acts of violence based on their gender, such as sexual violence. Following the attack women and pregnant women were not cared for appropriately, lacking proper medical care, sanitation, food and were victim to dehumanizing treatment such as confiscating all clothing.</td>
<td>The court ruled that the state violated Article 4 (right to life), Article 5.1.2 (freedom for inhuman treatment), Article 8(right to fair trial), and Article 25 (right to judicial protection) of the American Convention on Human Rights. The state was also found responsible for violating Article 1 (obligation to prevent and punish torture), Article 6(take effective measures to punish torture and inhuman treatment), and Article 8(obligation to investigate claims of torture) of the Inter-American Convention to Prevent and Punish Torture. Additionally the state was found in violation of Article 7.b (Duty to prevent, investigate, and punish violence) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women.</td>
<td><a href="https://www.cejil.org/sites/default/files/legacy_files/Summaries%20of%20Jurisprudence%20-%20Gender-based%20Violence.pdf">https://www.cejil.org/sites/default/files/legacy_files/Summaries%20of%20Jurisprudence%20-%20Gender-based%20Violence.pdf</a>, pgs. 1-23</td>
<td>inhuman and degrading treatment, right to life, right to fair trial, due diligence, custodial violence, state violence, sexual violence</td>
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<td>Gonzalez et al. v. Mexico (2009)</td>
<td>On November 6, 2001 the bodies of Ms. Claudia Ivette Gonzalez, Ms. Esmeralda Herrera Monreal, and Ms. Laura Berenice Ramos Monarrez, were found in a cotton field in Ciudad Juarez. The state was aware of the rampant pattern of gender-based violence and the region and failed to take measures to protect the populace.</td>
<td>The court ruled that state failed to protect victims although they had a full awareness of existent patterns of gender-based violence that resulted in deaths of hundreds of women and girls in the region. The state violated Article 1.1 (obligation to respect rights and not discriminate), Article 2 (obligation to provide domestic legal effects), Article 4 (right to life), Article 5.1.2 (prohibition of torture, cruel, inhuman, or degrading treatment), Article 7.1 (right to personal liberty), Article 8.1(right to fair trial), Article 19 (rights of the child), Article 25.1 (right to judicial protection) of the IACHR. The state was found responsible for lack of due diligence in investigation of homicides and lack of reparation to victims' families.</td>
<td><a href="https://www.cejil.org/sites/default/files/legacy_files/Summaries%20of%20Jurisprudence%20-%20Gender-based%20Violence.pdf">https://www.cejil.org/sites/default/files/legacy_files/Summaries%20of%20Jurisprudence%20-%20Gender-based%20Violence.pdf</a>, pg. 24- 61</td>
<td>right to life, inhuman and degrading treatment, right to fair trial, rights of the child, due diligence, discrimination</td>
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<tr>
<td>Case</td>
<td>Summary</td>
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<td>Relevant Articles</td>
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<td>Las Dos Erres Massacre v. Guatemala (2009)</td>
<td>In December 1982 there was a massacre of 251 men, women, and children in the villages of Las Dos Erres at the hands of a Guatemalan armed force, the kaibilies. Native Mayan women were said to have been specifically targeted for sexual violence.</td>
<td>The Court ruled that State was responsible for unjustified delay by judicial authorities in prosecuting, investigating and punishing those responsible for the atrocity. The state was found in violation of Article 1.1 (obligation to respect rights and not discriminate), Article 2 (obligation to provide domestic legal effects), Article 5.1 (prohibition of torture, cruel, inhuman, or degrading treatment), Article 8.1 (right to fair trial), Article 17 (rights of the family), Article 18 (right to a name and to surname of parents), Article 19 (right of the child), and Article 25.1 (right to judicial protection of the IACHR. The state also violated Article 7/7.b (duty to prevent, punish, and eradicate violence against women) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women and Articles 1 (obligation to prevent and punish torture), 6 (take effective measures to punish torture and inhuman treatment), and 8 (obligation to investigate claims of torture) of the Inter-American Convention to Prevent and Punish Torture.</td>
<td><a href="https://iachr.lls.edu/sites/iachr.lls.edu/files/iachr/Case/Las_Dos_Erres_Massacre_v_Guatemala/Las%20Dos%20Erres%20v.%20Guatemala.pdf">https://iachr.lls.edu/sites/iachr.lls.edu/files/iachr/Case/Las_Dos_Erres_Massacre_v_Guatemala/Las%20Dos%20Erres%20v.%20Guatemala.pdf</a></td>
<td>inhuman and degrading treatment, fair trial, right to private and family life, discrimination, rights of the child, state violence, sexual violence</td>
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<td>Perozo et al. v. Venezuela (2009)</td>
<td>Between October 2001 and August 2005 state agents physically and verbally harassed 44 journalists, most of whom were women, of the Globovision television stations, because they broadcasted a strike called by the Workers' Confederation of Venezuela and Fedecamaras.</td>
<td>The court found the state in violation of Article 1.1 (obligation to respect rights and not discriminate), Article 5.1 (right to humane treatment), and Article 13.1 (freedom of expression). The court did not analyze the applicants' claims in reference to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against women.</td>
<td><a href="https://iachr.lls.edu/sites/iachr.lls.edu/files/iachr/Case/Perozo_et_al_v_Venezuela/acost_a_perozo_et_al_v_Venezuela.pdf">https://iachr.lls.edu/sites/iachr.lls.edu/files/iachr/Case/Perozo_et_al_v_Venezuela/acost_a_perozo_et_al_v_Venezuela.pdf</a></td>
<td>inhuman and degrading treatment, freedom of expression, discrimination, state violence</td>
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Rosendo Cantu v. Mexico (2010)

On February 6, 2002, Valentina Rosendo Cantu, an indigenous woman, was walking home when she was stopped and questioned by a group of soldiers. When she did not respond in a manner the soldiers wanted, two of the soldiers raped her while 6 others watched. Following the incident, her husband filed a complaint with the indigenous authorities. Rosendo Cantu then went to the healthcare clinic, complaining of abdominal pain, and was referred to a clinic 8 hours away because the local physician did not want any involvement with the military. She then filed a complaint with the Public Prosecutor's office, who referred her case to the Military Public Prosecutor's office. She requested relief and requested the case to be seen outside military jurisdiction because she thought she would be treated unfairly due to the perpetrators' status as military personnel. The military dismissed the case as they were allegedly unable to prove anything illegal had occurred.

The court found the state guilty of violating Article 1.1 (obligation to respect rights and not discriminate), Article 2 (obligation to provide domestic legal effects), Article 5.1.2 (prohibition of torture, cruel, inhuman, or degrading treatment), Article 8.1 (right to fair trial), Article 11 (right to privacy and personal integrity), Article 19 (rights of the child), and Article 25.1 (right to judicial protection). The court added that her status as an indigenous minor and a woman should have been considered when investigating the case and found that there was a lack of due diligence in ensuring her case was fairly prosecuted.


inhuman and degrading treatment, right to private and family life, fair trial, rights of the child, due diligence, discrimination, sexual violence, state violence
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<th>Case Title</th>
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<th>Decision</th>
<th>Links</th>
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<tr>
<td>Espinoza Gonzalez v. Peru (2014)</td>
<td>Gladys Carol Espinoza Gonzales was arrested by police in 1993 in Lima, convicted of treason, and sentenced to life imprisonment. While in detention she was victim of beatings, torture, rape, and other violence. She was not provided adequate medical treatment and her allegations of abuse were ignored. In 2003, her sentence was overturned, however in 2004 she was convicted of terrorism charges and remained in prison.</td>
<td>The court ruled that the state violated Article 1.1 (obligation to respect rights and not discriminate), Article 2 (obligation to provide domestic legal effects), Article 5.1.2 (prohibition of inhuman or degrading treatment), Article 7.1.2.3.4.5.6 (right to personal liberty and freedom from arbitrary detention), Article 8.1 (Right to fair trial), Article 11.1.2 (protection of private life), and Article 25 (right to judicial protection) of the IACHR. The state was also found guilty of violating Article 7 (obligation to prevent, punish, and eradicate violence against women) of the Convention of Belem do Para, and Articles 1 (obligation to prevent and punish torture), 6 (take effective measures to punish torture and inhuman treatment), and 8 (obligation to investigate claims of torture) of the Inter-American Convention to Prevent and Punish Torture.</td>
<td><a href="http://www.corteidh.or.cr/docs/casos/articulos/seriec_289_ing.pdf">http://www.corteidh.or.cr/docs/casos/articulos/seriec_289_ing.pdf</a></td>
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<tr>
<td>Velásquez Paiz et al. v. Guatemala (2015)</td>
<td>In August 2005, Claudina Isabel Velasquez Paiz went missing from a party. Her family reported the missing person to the police however, they refused to file a report on the missing woman and denied assistance in searching for their daughter. The family tried 3 times to file a missing persons report, however the police continued to deny assistance. The next morning the Ms. Velasquez Paiz' body was found, beaten and sexually assaulted. There was a reported increase of violence against women during this time period.</td>
<td>The court ruled that the state failed to fulfill its positive obligations of due diligence in protecting and properly investigating Ms. Velasquez Paiz' case. The court ruled the state in violation of Article 1 (obligation to respect rights and not discriminate), Article 4 (right to life), and Article 5 (prohibition of torture, cruel, inhuman, or degrading treatment) of the ACHR. They were also ruled in violation of Articles 1 (obligation to prevent and punish torture) and 7 (Duty to prevent, investigate, and punish violence) of the Convention of Belem do Para.</td>
<td><a href="http://ohrh.law.ox.ac.uk/velasquez-paiz-et-al-v-guatemala-gender-stereotypes-and-lack-of-justice-part-i/">http://ohrh.law.ox.ac.uk/velasquez-paiz-et-al-v-guatemala-gender-stereotypes-and-lack-of-justice-part-i/</a></td>
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All cases involve violations of human rights standards, including the right to life, the prohibition of torture and inhuman or degrading treatment, the right to personal liberty and freedom from arbitrary detention, and the protection of private life. The cases also highlight the importance of due diligence in protecting and investigating human rights violations, especially in cases of missing persons. The cases demonstrate the need for states to take effective measures to prevent and punish torture and inhuman treatment, and to investigate claims of torture. The cases also emphasize the importance of addressing gender stereotypes and the lack of justice in the treatment of missing persons and violence against women.
### 3. International Criminal Court Charges for Sexual and Gender Based Violence 2000-2017

<table>
<thead>
<tr>
<th>Case</th>
<th>Charges</th>
<th>State of Case</th>
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</table>
| Prosecutor v. Omar Al Bashir (President of Sudan)                    | • Sexual violence causing serious bodily or mental harm as an act of genocide  
• Rape as a crime against humanity                                  | Pre-trial, Arrest Warrant Issued in 2009 and 2010                             |
| Prosecutor v. Jean-Pierre Bemba Gombo (President of the Movement for the Liberation of Congo) | • Rape as a crime against humanity                                      | Found guilty March 2016, in appeals                                           |
| Prosecutor v. Laurent Gbagbo (former President of Cote d’Ivoire) and Charles Blé Goudé (leader of the youth movement in support for Gbagbo) | • Rape as a crime against humanity  
• Persecution (including acts of rape) as a crime against humanity | trial began January 2016                                                     |
| Prosecutor v. Ahmad Muhammad Harun (Minister of State for the Interior of the Sudanese Government) and Ali Muhammad Ali Abd-Al-Rahman (Leader of the Janjaweed Militia) | Charges against Harun:  
• Rape as a crime against humanity (2 counts)  
• Rape as a war crime (2 counts)  
• Outrages on personal dignity as a war crime  
• Persecution by means of sexual violence as a crime against humanity (2 counts)  
Charges against Kushayb:  
• Rape as a crime against humanity (2 counts)  
• Rape as a war crime (2 counts)  
• Outrages upon personal dignity as a war crime (2 counts)  
• Persecution by means of sexual violence as a crime against humanity (2 counts) | Pre-trial, Arrest Warrant Issued in 2007                                      |
| Prosecutor v. Mathieu Ngudjolo Chui (Leader of the Front des nationalistes et integrationnistes) | • Rape as a crime against humanity  
• Rape as a war crime  
• Sexual slavery as a crime against humanity  
• Sexual slavery as a war crime | Acquitted 2012, decision upheld 2015                                        |
| Prosecutor v. Germain Katanga (Commander of the Force de resistance patriotique en Ituri) | • Rape as a crime against humanity  
• Rape as a war crime  
• Sexual slavery as a crime against humanity  
• Sexual slavery as a war crime | Acquitted of SGBV charges in 2014, convicted of other crimes currently serving 12 year sentence |
| Prosecutor v. Uhuru Muigai Kenyatta (Deputy Prime Minister and Minister of Finance of Kenya)-formerly included Francis Kirimi Muthaura and Mohammed Hussein Ali | • Rape as a crime against humanity  
• Other inhumane acts as a crime against humanity  
• Persecution (by means of rape and other inhumane acts) as a crime against humanity | Closed due to insufficient evidence                                           |
<table>
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<tr>
<th>Case</th>
<th>Description</th>
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<tbody>
<tr>
<td>Prosecutor v. Bosco Ntaganda  (deputy Chief of Staff and commander of operations of the Forces Patriotiques du Congo)</td>
<td>Rape of civilians as a crime against humanity, Rape of civilians as a war crime, Rape of child soldiers as a war crime, Sexual slavery of civilians as a crime against humanity, Sexual slavery of civilians as a war crime, Sexual slavery of child soldiers as a war crime, Persecution (including acts of rape and sexual slavery) as a crime against humanity</td>
<td>Trial opened in September 2015</td>
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<tr>
<td>Prosecutor v. Callixte Mbarushimana (Executive Secretary of the Forces Democratiques pour la Liberation du Rwanda)</td>
<td>Rape as a crime against humanity, Rape as a war crime, Other inhumane acts (acts of rape and mutilation of women) as a crime against humanity, Inhuman treatment (acts of rape and mutilation of women) as a war crime, Gender Persecution as a crime against humanity, Mutilation as a war crime</td>
<td>Closed due to insufficient evidence, upheld in appeal in 2011</td>
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<tr>
<td>Prosecutor v. Simone Gbagbo (Ivorian National)</td>
<td>Rape and other forms of sexual violence as a crime against humanity, Persecution as a crime against humanity</td>
<td>Pre-trial, Arrest warrant issued in 2012</td>
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<tr>
<td>Prosecutor v. Sylvestre Mudacumura (Supreme Commander of the Forces Democratiques pour la Liberation du Rwanda)</td>
<td>Rape as a war crime, Torture as a war crime, Mutilation as a war crime, Outrages upon personal dignity as a war crime</td>
<td>Pre-trial, Arrest warrant issued in 2012</td>
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<tr>
<td>Prosecutor v. Abdel Raheem Muhammad Hussein (Minister of National Defense of Sudan)</td>
<td>Persecution (acts of sexual violence) as a crime against humanity, Rape as a crime against humanity, Rape as a war crime, Outrages upon personal dignity as a war crime</td>
<td>Pre-trial, Arrest warrant issued in 2012</td>
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<td>Prosecutor v. Joseph Kony (Commander-in-Chief of the Lord's Resistance Army) -formerly Vincent Otti, Rasaka Lukwiya, Okot Odhiambo, and Dominic Ongwen</td>
<td>Sexual slavery as a crime against humanity, Rape as a crime against humanity, Rape as a war crime</td>
<td>Pre-trial, Arrest Warrant issued in 2005</td>
<td></td>
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<tr>
<td>Prosecutor v. Al-Tuhamy Mohamed Khaled (former Lieutenant general of the Libyan army and former head of the Libyan Internal Security Agency)</td>
<td>Inhumane treatment (including rape and sexual violence), outrages upon personal dignity as a war crime, Crimes against humanity (including sexual violence and rape)</td>
<td>Pre-trial, Arrest warrant issues in 2013 an reissued in 2017</td>
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<tr>
<td>Prosecutor v. Dominic Ongwen (Brigade Commander of the Sinia Brigade of the Lord's Resistance Army)</td>
<td>Outrages upon personal dignity as a crime against humanity, Crimes against humanity (including forced marriage, rape, torture, sexual slavery, and enslavement)</td>
<td>Trial began December 2016</td>
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</tbody>
</table>
VI. Works Cited


Constitution against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. "General Comment No. 3 of the Committee against Torture: Implementation of article 14 by State parties."


—. "Seferovic v. Italy." Application no. 12921/0.2011


