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## To What Extent Should States Regulate the Media Under International Law Relating to Violence Against Women?

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'Violence against women persists in every country in the world as a pervasive violation of human rights and a major impediment to achieving gender equality. Such violence is unacceptable, whether perpetrated by the State and its agents or by family members or strangers, in the public or private sphere, in peacetime or in times of conflict... Eliminating violence against women is one of the most serious challenges of our time... [which] requires clear political will, outspoken, visible and unwavering commitment at the highest levels of leadership of the State and the resolve, advocacy and practical action of individuals and communities.'

[1]

This piece is just one part of that 'advocacy and practical action'[2]. Its purpose is to help to influence those campaigns which are combating violence against women and to help organisations holding governments to account for the violence that States do not take adequate action against. Primarily it will be used to clarify the way that I personally interpret State obligations under international law and through that personal clarity I will be empowered, though my job as a Campaigner with Oxfam and through my governance role within Amnesty International UK to refine and deliver high impact campaigns[3] on gender relations and women's human rights.

Due to limitations of space the piece will not be able to make specific policy suggestions for individual countries. The framework developed below is generic and points to the direction and general balance of obligations.

### Part One: International Human Rights Framework

Part One outlines the legal framework for state obligations under international law. First it will consider the trinity of obligations under human rights law; the duties to respect, protect and fulfil. Secondly it will consider how a state's legal human rights duties may at times appear to "conflict" and will set out some of the ways in which it is possible to identify priorities and find a balance within such "conflicts". It will conclude by setting out a systematic process for understanding such "conflicts" and for resolving questions that relate to those problems.

#### 1.1 – *Respect, protect and fulfil- the trinity of State obligations under human rights law*

The respect, protect, and fulfil typology of obligations is fundamental to an understanding, and the realisation, of all human rights.[4] The obligation to respect is a "negative" duty which requires that the state *does not take* prohibited action. The obligations to protect and fulfil are "positive" duties as they require states *do take* action, either preventing private actors from interfering with others rights or ensuring that a minimum standard is achieved through some form of provision or regulation. Traditionally civil and political rights have been misunderstood as requiring primarily negative obligations while economic, social and cultural rights have been misunderstood as requiring primarily positive obligations. In reality all rights oblige states to ensure some negative duties and some positive duties.

# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

Article 1 (1) of the ICCPR indicates that 'each State Party to the present Covenant undertakes to respect and to ensure to all individuals within a territory and subject to its jurisdiction the rights recognized in the present Covenant'.<sup>[5]</sup> This clearly obliges the State Parties to respect rights however it also implies an obligation to protect and to fulfil rights. The words "and to ensure" are incredibly important. The word "ensure" suggests that the State must take all necessary action to guarantee the rights in the covenant, the words "and to" suggest that states must do something different, maybe even beyond, simply respecting the rights. This something that states must also do is the protection and fulfilment of rights. The preamble of the ICCPR also lends itself to an interpretation akin to that above; it notes the 'obligation under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms'.<sup>[6]</sup> This quite clearly indicates that states must respect and observe rights themselves in their own actions but must also universalise that respect and observance among other states and among private actors within their territories. The word "observance" is also potentially important as it's addition suggests that "observance" is different to "respect". It could be that "observance" suggests a duty to protect, and even fulfil, rights as observance suggests a duty to actively record individual's access to human rights and freedoms and to step in where those standards are lagging. The ICCPR clearly requires states to respect, protect and fulfil the rights entailed in it's articles 6-27.

The ICESCR also clearly imposes obligations of respectful, protective and fulfilling types; some of which are "immediate" obligations and others of which are subject to "progressive realisation". The principle "immediate" obligation is the obligation '*to take steps*, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present covenant by all appropriate means, including particularly the adoption of legislative measures'.<sup>[7]</sup> That obligation to take steps is clearly one which is proactive and has a fulfilling orientation. The emphasis on resources also implies a duty which is fulfilling in nature. Indeed the purposive reasoning in Article 2 indicates that states obligations extend to taking any action which progresses the realisation of the rights in the ICESCR. Another immediate obligation deriving of this article is the responsibility of the state not to take any action which may limit the realisation of rights; no state may take regressive action. The final immediate obligation that must be mentioned is the immediate obligation 'to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights'.<sup>[8]</sup> These obligations all require elements of respect, protection and fulfilment.

This typology of rights is also useful when analysing regional human rights mechanisms. The European Convention on Human Rights immediately refers explicitly to obligations which are respectful in nature; Article 1 is on the 'obligation to respect human rights'.<sup>[9]</sup> None of the ECHR's rights in articles 2-14 explicitly oblige any protection or fulfilment measures; the court has not taken the opportunity to define positive duties.<sup>[10]</sup> However two arguments refute the claim that these obligations don't exist. Article 17 discourages private actors from interfering with an individuals rights, by asserting that no right exists allowing for, the abuse of rights by 'any state, group or person'.<sup>[11]</sup> This article extends the security that the rights (articles 2-14) afford to protection from private actors however only in the where the abuser is '[taking advantage] of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms'.<sup>[12]</sup> Article 17 is not necessarily a prohibition of all activities which undermine the security that human rights provide but is rather a prohibition on actors using their own rights as a trump, employed for their own benefit over those of others. Furthermore, the rights within articles 2-14, and the obligations set out in articles 1 and 17, logically require the realisation of protection and fulfilment to confirm full compliance with the the State's duties. The State's obligation to respect usually requires that the state doesn't do a prohibited activity or condone or support a prohibited activity by private individuals.<sup>[13]</sup> It is difficult to see how a state obligation to protect individuals is morally different to the obligation to respect individuals. Most human rights' philosophy would suggest that if an individual requires protection from some form of harm then protection should not only be from infringement by the state but also from other potential threats.<sup>[14]</sup> Similarly as human rights are given such fundamental status common logic suggests that where an individual is unable to protect themselves from the associated harm then society, embodied in States and the international community, should assist in that protection to the extent required by the fundamental nature of the right and their ability to protect it.<sup>[15]</sup> It is also of benefit to note that most, if not all, respect and protect duties require state action. Article 2, the right to life, of the ECHR can be used to show this logic. Article 1 in conjunction with article 2 provides for the obligation that the State must respect the right to life by not killing anybody, subject to article 2(2)'s provisions. Article 17 in conjunction with article 2 ensures that no private actor may

# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

kill in order to protect their own rights subject to article 2(2)'s provisions including 'in defence of any person from unlawful violence'[16] so long as 'the use of force is no more than is absolutely necessary.'[17] The ECHR clearly provides for the respect and protection of the right to life, subject to reasonable limitations, however it doesn't provide any means or methods for ensuring that respect or protection. It is of course up to the state itself how to ensure that these rights are respected and protected but it seems reasonable to assume that some form of effective judiciary and well-trained police force would be required, it is this provision which, at least in part, fulfils our right to life where individuals are unable to protect themselves. The logic behind article 1, 17 and 2 (as is the case with all ECHR rights) requires elements of respect, protection and, through logical extrapolation, fulfilment.

The preamble of the European Charter makes its emphasis and purpose clear resolving that signatories will 'make every effort in common to improve the standard of living and to promote the social well-being ... by means of appropriate institutions and action,'[18] Much of the substance then issues guidance on the form of social policy which States must take in order to fulfil their obligations, such as a policy to attain and maintain a 'high and stable level of employment... with a view to full employment'[19] to ensure 'safe and healthy working environments through regulation and supervision,[20] and to 'establish or maintain a system of social security.'[21] This emphasis on protection and fulfilment however doesn't mean that there are no aspects of respectful duty, the State is obliged not to violate the right to collective bargaining[22] and to freedom of 'opportunity to earn [one's] living in an occupation freely entered upon.'[23]

The right to life is one where positive duties have become and are becoming accepted by State parties and the European Court of Human Rights. As Mowbray indicates both the McCann case and the Osman case reflect some positive obligation to protect life as well as to merely respect it as well as procedural obligations such as ensuring effective investigation after any killing.[24] Other positive duties have become established; for example the protection of the freedom of expression, following the Gündem case, entails an obligation on the State to safeguard journalists and media organisations from unlawful violence.[25] The duties to fulfil have become well established in the legal opinions of the court however it is unclear to what extent States comply to that legal opinion as there is no way to assess to what extent States "sign-up" to the fulfilment duties which the court has recognised. In case law States always argue against such duties or argue that the extent of those duties don't extend to the realms that applicant's argue.

It is interesting to note that despite most commentator's distinction between respectful, protective and fulfilment obligations they are almost always mutually necessary. For example it is all very well a State undertaking the obligation to respect individuals right not to be tortured but in order for them to fulfil that duty effectively they must provide training for their public officials and legally protect individuals in a case where a public official breaches the law.

## 1.2 – Conflicting Rights

At the heart of the question about violence against women and the role of the state in regulating the media is the apparent "conflict" of the women's right to be free from such violence (and men's right to be free from a society in which this violence occurs) and the right of all individuals to freedom of expression.[26] The "conflict" could be described thus because in order to "fully" respect, protect and fulfil either right it may be argued that one or other right must be limited. The argument goes; either we can have freedom from violence against women or we can have freedom of expression. This piece strongly disagrees with this position and sets out from the premise that no right is absolute and that each rights' legal justification must be read in the context of the convention(s) it sits within in order to establish, legally, where the balance between rights should lie. Philosophical argument can, indeed probably should, carry on *ad infinitum* however for now we must work with the law as it is now and the law as it can be developed.

One key factor to account for in the debate that follows is that no right is absolute and all rights have some scope, within themselves, for limitations to be set around the protected ground. In some cases this scope is set out in clear terms. Article 9(1) of the ICCPR reads 'Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in

# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

accordance with such procedures as are established in law.’[27] In the case of this right the text indicates that all individuals own the right to liberty and security of person, it then attempts to disaggregate that right setting priority limitations to the right; the right includes a prohibition on arbitrary arrest or detention but explicitly empowers states to deprive individuals of their liberty in accordance with legal procedures. (Under Article 2(1) of the ICCPR such legal procedures must be set in accordance with the other rights in the ICCPR which include further protections for detained individuals.) Article 7 of the ICCPR may present a slightly different prospect because it’s terms are uncompromising; ‘No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experiment.’[28] At first reading this human right would appear to prohibit any form of physical force used against people within a State’s territory. However it is well established that State security services are allowed to use some element of force to arrest and detain individuals suspected of criminal offence so long as the force used is proportional to the crime suspected and threat experienced. Because such a use of force does not fall within the definition of “torture [or] cruel, inhuman or degrading treatment or punishment” it is permissible.

Some human rights are given priority either explicitly or implicitly through convention texts, the right to be free from discrimination is often one of those given priority. Within the ICESCR some human rights obligations are immediate while others must be progressively realised. Immediate obligations include the obligation to ‘guarantee that the rights ... will be exercised without discrimination of any kind.’[29] In the case of the ICESCR freedom from discrimination regarding the fulfilment of rights is given explicit priority in terms of the time by which that obligation must be fully implemented.

Freedom from discrimination and right to equal enjoyment of rights under ICESCR Article 2 and 3[30] act as a kind of “gatekeeper” through which any fulfilment mechanism must pass before being acceptable and thus has implicit priority also. The implicit priority that freedom from discrimination is allocated by its role as a “gatekeeper” in the ICESCR is consistent through other international human rights conventions. For example under the ICCPR ‘Each State Party... undertakes to respect and to ensure to all individuals within its territory and subject to it’s jurisdiction the rights recognised in the present Covenant, without distinction of any kind...’[31] and ‘to ensure the equal right of men and women to the enjoyment of civil and political rights.’[32] Indeed such clauses are prolific amongst human rights conventions being included in the ICCPR, ICESCR, CEDAW,[33] the United Nations Convention on the Rights of the Child,[34] and many regional conventions and treaties. Article 1 of the UN Charter similarly requires the promotion and encouragement of respect for human rights and fundamental freedoms ‘without distinction as to race, sex, language or religion.’[35]

A third way in which human rights conventions sometimes define the scope of the rights that they entail and imply a hierarchy of rights is through the provision of derogation clauses. One example is Article 4 of the ICCPR which states that in a ‘time of public emergency which threatens the life of the nation... States Parties... may take measures derogating from their obligations... provided such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the basis of race, colour, sex, language, religion or social origin. 2) No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.’[36] The implication here would seem to be that those human rights entailed within the above articles are more of a priority than those not mentioned, discrimination still acts as a gatekeeper for all rights at all times.

Clearly there are some explicit and implicit treaty endorsed methods for defining the scope and interdependent scopes for rights, or at least some mechanisms which may be used for the purpose of defining those parameters. Overall some rights seem almost absolute and inviolable while others are more easily de-prioritised in favour of other rights or social goals. Those rights which are absolute and inviolable would appear to be of a higher priority and where they act as “gatekeepers” or as “immediate” rather than “progressively realised” rights State policy and practice must address them as a priority, possibly over the “interests” of other, lower priority, rights. The right to exercise and enjoy one’s human rights without discrimination is one of the former variety of rights.

Another way that may be used to determine the priority of rights is to identify how central they are to human functioning and human dignity. The more central to these human facets the higher priority they may be said to have. Amartya Sen developed the idea of “capabilities” as an alternative indicator framework for measuring human

# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

improvement or deterioration. As Sen sets out in “Development as Freedom”:

‘for many evaluative purposes, the appropriate “space” is ... the substantive freedoms -capabilities- to choose a life one has reason to value. If the object is to concentrate on the individual’s real opportunity to pursue her objectives... then account would have to be taken not only of the relevant personal characteristics that govern the *conversion* of primary goods into the person’s ability to promote her ends.’[37]

To use the infamous description that Martha Nussbaum provides the approach focuses upon broadening the scope of ‘what people are actually able to do and to be.’[38] Human capabilities ‘represent the *freedom* to achieve: the alternative functioning combinations from which this person can choose.’[39] If one right can be said to be of higher importance then that should be taken into account when attempting to find the balance between two so called “conflicting” rights. In the case of the conflict at stake in this piece, that of the right to be free from violence against women and the right to freedom of expression I would argue that the prior is of higher priority. Simply put this is because violence against women not only attacks women’s physicality but also their mentality and the entire identity of the individual. Others will argue differently however this is not the place to bear out the debate in full.

## 1.3 – Finding the balance

Using the above understanding as guidance it is possible to identify a logical process through which decisions regarding the balancing between the obligations regarding a perceived “conflict” of rights. A standard approach should look something like this:

1. Identify terms of rights that require balancing
2. Identify priority of each right in conventions
3. Identify if either right is more fundamental to dignity/ capability or if a certain minimum standard of access is necessary (this could affect priority result)
4. Identify if any other obligations are relevant and if so, how so.
5. Observe current enjoyment and exercise of rights and estimate the impact that different options for change might have upon that enjoyment. Would the right be temporarily limited in proportion to a greater need or would a right be “destroyed” by making proposed changes?
6. Make a change in policy and practice according to the balance suggested by the above analysis.
7. Monitor, evaluate and modify as required by the change.

As noted above this piece will identify an approximation of where policy and practice should be heading internationally. It will not be able to specify exact policy and practical changes because it focuses upon the international standards rather than the domestic compliance. It will take us through the process to an internationally focused stage 4.

## Part Two– International Law Relating to Violence Against Women

Part two will consider what a human rights based definition of violence against women is. It will then determine, in general, what State’s obligations under the Convention on the Elimination of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are and how the interpretation of those duties may be understood in the twenty first century.

### 2.1- A human rights based legal definition of “violence against women”

Intimate partners and family members (including ex-partners) represent the greatest threat to women. This threat is not confined to one socio-economic culture; despite this programmes must be tailored to specific victims’ experiences and specific communities.[40] According to The UN Secretary General’s ‘In-depth study on all forms of violence against women’ ‘The forms of violence a women may experience within the family across her life cycle extend from violence before birth to violence against older women. Commonly identified forms of violence against

# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

women in the family include: battering and other forms of intimate partner violence including marital rape; sexual violence; dowry-related violence; female infanticide; sexual abuse of female children in the household; female genital mutilation/cutting and other traditional practices harmful to women; early marriage; forced marriage; non-spousal violence; violence perpetrated against domestic workers; and other forms of exploitation.’[41]

International legal definitions of violence against women generally derive of two human rights elements. There must be an element of the practice which is discriminatory or inequitable and the second which is a violation of the standards set by individual’s human rights. This is why the CEDAW monitoring committee provides a clear definition; ‘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,’[42] For the CEDAW committee and for the purposes of this piece that violence is being inflicted “because she is a women” or because its “affects women disproportionately” is fundamental to the definition of violence against women. In order to understand this definition it is necessary to de-construct the term and analyse definitions of discrimination, equality and “physical, mental or sexual harm or suffering.”

Article 1 of CEDAW defines ‘discrimination against women’ as ‘any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’[43] A contemporary definition of “non-discrimination” and its role providing “equality” requires consideration of the analysis in *Andrews v. Law Society of British Columbia*. The case provides a typology of protections which derive from the principle of ‘equality before the law’ which is entailed within Section 15 of the Canadian Charter of Rights and Freedoms[44] and article 26 of the ICCPR.[45] These protections are ‘(1) the right to equality before the law; (2) the right to equality under the law; (3) the right to equal protection of the law; (4) the right to equal benefit of the law.’[46] Influenced by ‘various human rights codes’[47] the judgement provides a legal analysis of discrimination.[48] Discrimination complainants must identify differential treatment, show that the differential treatment is based on belonging to a protected social group and that the differential treatment is detrimental to them.[49] The ‘onus of justifying [such] infringement... must, of course, rest upon the parties seeking to uphold the limitation’.[50] The Court makes clear that ‘not all distinctions and differentiations created by law are discriminatory’.[51] Importantly the decision outlined the steps which might find an infringement justified; declaring that the proportionality of the discrimination must be assessed against the importance of the purpose.[52] “Equality in all fields” can therefore be determined as being the absence of prohibited discrimination in the context of equal protection, before and under the law and equal protection and benefit from the law. Violence against women therefore is a form of discrimination as it is a restriction made on the basis of sex which impairs or nullifies the enjoyment of various human rights. Violence against women is a double breach of rights- it is both a violation of the right(s) being breached by the violence (such as torture, cruel, inhuman and degrading treatment, the right to the highest attainable standard of health and others) it is also a breach of women’s right not to be discriminated against. It is important to note that in order for discrimination to be found the “distinction, exclusion or restriction” must have a negative impact upon the “enjoyment or exercise” of rights. Where no such negative impact is occurring there will not be any violation.

Equality is defined in various ways within human rights law. Article 4 of CEDAW indicates the goal of temporary special measures is the achievement of ‘*de facto* equality’ which could be interpreted as “equality in reality”. Article 4 notes that such measures should discontinued ‘when the objectives of equality of opportunity and treatment have been achieved.’[53] Article 4 indicates that the reality that is required is not “equal outcome” or simply “equal treatment”. Article 4 requires “equal treatment” where that is appropriate for the equal access to the enjoyment and exercise of rights and “equal opportunity” where that is appropriate. It may be that in order for rights to be effectively enjoyed and exercised a fusion of both “equal treatment” and “equal opportunity” or that these might mean the same thing. This understanding of equality is important for the definition of “violence against women” as it tells us what we mean by the disproportionate impact upon women it is possible to say that this equality principle has been breached if violence in society has led to there being an unequal opportunity for women to live a life free of gendered violence than the opportunity for men to do like wise. This can be true of all forms of violence whereby females are more likely to experience some form of violence during their lives or of specific forms of violence where females are more likely to experience some specific form of violence- as is the case with sex selective abortions or with female infanticide.

# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

In a wide ranging depiction the Council of Europe's Committee of Ministers have defined "violence against women" as: 'Physical Violence' where 'severity of injury ranges from minimal tissue damage, broken teeth and bones to permanent injury and death',[54] 'Sexual Violence' including 'Any non-consensual sexual activity including sexual taunts and jokes... offensive phone calls... coerced sex, rape...',[55] 'Psychological violence' including 'humiliating comments... isolation... usually experienced as damaging to self-image and self-confidence',[56] 'Economic violence' such as 'Inequitable control over access to shared resources... or denial of the wife's right to property', 'Structural violence' comprising 'non-visible and non-tangible barriers against the realisation of women's potential options and basic rights... power differentials and power relations',[57] 'Spiritual violence' that 'erodes or destroys a women's cultural or religious beliefs by ridiculing or penalising them or forcing her to adhere to a different belief system.'[58] However this definition draws on forms of harm or suffering which should be protected against under various separate human rights standards. General Comment 19 of the CEDAW committee lists eight rights which may be impaired or nullified within the definition of "violence against women". These are; 'a) the right to life; b) the right not to be subject to torture, or to cruel, inhuman or degrading treatment or punishment; c) the right to equal protection according to humanitarian norms in time of international or internal armed conflict; d) the right to liberty and security of person; e) the right to equal protection under the law; f) the right to equality in the family; g) the right to the highest attainable standard of physical and mental health; h) the right to just and favourable conditions of work.'[59]

For the purposes of this piece the CEDAW definition mentioned above will be used to analyse the extent to which the media should be regulated '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,'[60] where mental harm and suffering includes the psychological and spiritual forms of violence mentioned by the European Committee of Ministers. Due to limits of space and time this piece will not consider in more detail the structural and economic forms of harm and suffering, though it is recognised that these rights are fundamental and the harm that occurs where they are limited can be as harmful as when other forms of violence occur.

## 2.2 – State obligations to end violence against women

CEDAW Article 3 of the Convention on the Elimination of Discrimination Against Women (CEDAW) requires that 'State parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of their human rights and fundamental freedoms on a basis of equality with men.'[61] This is a very powerful article which clearly requires States to do everything that they can to guarantee rights on a basis of equality with men. States 'shall take' 'all appropriate measures'.[62] This places the priority of taking such action very high. The state is not required to simply consider taking action or to ensure respect for the rights by its public agents, the state is required to pro-actively take action to 'ensure the full development and advancement of women'[63] therefore its obligations include respecting, protecting and fulfilling those rights.

CEDAW also obliges states to take, where appropriate, 'temporary special measures aimed at accelerating de facto equality between men and women' such measures. A "temporary special measure" is an impermanent measure which allows proportional discrimination in favour of women; that is differential treatment on the basis of sex which differently advantages female individuals in order to accelerate achievement of *de facto* equality between women and men.

CEDAW's article 5 requires that States 'take all appropriate measures: 1) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of an inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.'[64] This ensures that states must take action not only on the direct occurrence of discrimination but also on the cultural and social factors which recreate such conditions.

The CEDAW committee comment 25 indicates that temporary special measures 'are a part of a necessary strategy' to eliminate all forms of discrimination against women.[65] The Committee on Economic, Social and Cultural Rights (CESCR) General Comment 16 states that temporary special measures 'may sometimes be *needed*' and the application of 'the principle of equality will sometimes *require* that States Parties take [positive action].'[66] The

# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

Committee on Civil and Political Rights (CCPR) has not commented on “temporary special measures” however in General Comment 28 it notes that States must ‘take effective and positive measures to promote and ensure women’s participation in the conduct of public affairs and in public office, including appropriate affirmative action.’[67] The CCPR also underlines that States must take ‘all measures necessary to eliminate discrimination against women in all fields.’[68] Taken together this indicates that the ICCPR requires “a necessary strategy” and temporary special measures should be part of that strategy where appropriate. The major treaty bodies all appear to have recognised a *requirement* to utilise temporary special measures, where appropriate, as part of a strategy which is required by the principle of equality.

A review of Country Reports considered at the 35<sup>th</sup> Session of the CEDAW committee indicates that seven out of the eight reports directly mention temporary special measures.[69] These measures took the forms of quota systems in political or educational sectors or supporting female enterprise and training, or campaigns relating to female stereotypes, or a combination of such strategies. Measures tend to concentrate upon females experiencing the worst economic situations, for example the rural poor,[70] or in areas where female participation was particularly low, such as in army and police forces.[71] The CEDAW committee’s response to the Guatemalan report which in relation to Article 4 simply stated that ‘During the 2002-2003 period covered by this report, no temporary special measures for the advancement of women have been undertaken’[72] is interesting. Elsewhere in the report Guatemala noted that there is a 44% quota for women in elections however in its concluding observations the Committee expresses its concerns regarding take up relating to that quota, patriarchal attitudes and female participation in political and public positions[73] and ‘calls on’ the government to strengthen their use of temporary special measures especially in these areas.[74] Country Reports following the CESCRC General Comment 16 suggest that many countries are reporting on temporary special measures taken to promote equality for women in all fields.[75] El Salvador is an example promoting equality through special training programmes, encouraging corporate responsibility relating to the objectification of women and taking special action regarding victims of gendered violence.[76]

Types of temporary special measure required by international obligations, when measures are appropriate and what specific purposes may such measures accelerate achievement of, has not been substantially commented upon. The Steelworkers Case affirms that courts ‘need not’ ‘define in detail the line of demarcation between permissible and impermissible affirmative action plans.’[77] This judgement set precedent for further domestic and international considerations. The repeated failure to set criteria has led to a history of failed programmes in the US[78] which has resulted in the extreme individualisation of the concept. Programmes can only be designed to affirmatively assist people who show individual disadvantage, probably economic, due to membership of a social group.[79] International bodies have made some effort to determine the “line of demarcation”. The European Court of Justice has indicated temporary special measures which give women, as a group, specific advantage with a view to women, as a group, competing in the labour market is permissible but it is beyond the pale to ‘guarantee women absolute and unconditional priority for appointment or promotion.’[80] There is an obligation under international law to promote equality through temporary special measures as part of a necessary programme of action to combat inequality and discrimination.

ICCPR article 26 ensures that ‘All persons are equal before the law and are entitled without discrimination to the equal *protection* of the law.’[81] This requirement ensures that the State has an obligation to prohibit discrimination in “public” and “private” realms and to develop and maintain laws, policies and action which enforces prohibition. The CEDAW committee notes that ‘States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and *punish* acts of violence, and for providing compensation.’[82]

## Part Three: Introduction to the Sociology of Violence Against Women

Part Three will initially present the extent of the sociological problem that is violence against women. It will then consider what lines of responsibility can be identified as causing violence against women and will offer suggestion for why within those lines of responsibility the media is of particularly high sociological priority.

### 3.1 – Statistics and facts relating to the sociology of violence against women



# To What Extent Should States Regulate the Media Under International Law Relating to Violence

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In 2006 the UN Secretary General published an in depth report on all forms of violence against women. It concluded that 'violence against women is a widespread and serious problem that affects the lives of countless women and is an obstacle to the achievement of equality, development and peace in all continents... The time has come for all nations and peoples to make this a local, national, regional and international priority.'<sup>[83]</sup> A recent Amnesty International report 'It's in our hands' suggested that 'At least one in three women has been beaten, coerced into sex, or otherwise abused in her lifetime, according to a study based on 50 surveys from around the world.'<sup>[84]</sup> The UN study also collated data from surveys around the world and found that in some countries and regions over 50% of women had suffered 'physical assaults' 'by a male partner'.<sup>[85]</sup> In Managua, Nicaragua, 69% of women between the ages of 15 and 49 reported having been physically assaulted.<sup>[86]</sup> Out of 90 surveys reported 21 indicated a rate of abuse over 40% these included surveys in Africa, Latin America and the Caribbean, Asia and the Western Pacific, Europe and the Eastern Mediterranean.<sup>[87]</sup>

Most studies recognise the diversity of the ways in which violence against women manifests however they also recognise that the 'broad context from which it emerges includes disparities of power in the form of patriarchy, sociocultural norms and practices that perpetuate gender-based discrimination and economic inequalities.'<sup>[88]</sup> These social constructions are in many ways self-replicating systems where by young individuals are educated (informally and formally) in such a way that reproduces disparity and gender relations which then lead to perpetual violence. Amnesty International UK has undertaken research in the UK on awareness and attitudes towards sexual assault and young people's attitudes to violence against women; it's findings are stark. Despite the reality being approximately 80,000 rapes per year in the UK only 4% of individuals surveyed guessed that incidence was over 10,000, 6% of women and 3% of men believed the figure was less than 100 per year.<sup>[89]</sup> 37% of respondents took the attitude that a women was partially or totally responsible if she failed to clearly say 'no', 30% expressed the attitude that a women was partially or totally responsible if she was drunk.<sup>[90]</sup> Another survey found that 3% of young men (16-20 year olds) think it is acceptable to hit a girlfriend if she refuses to have sex with him.<sup>[91]</sup>

International studies indicate that efforts which have been successful at lowering violence against women in other parts of the world have been successful due to three factors which must be tackled together; victims must be supported, perpetrators must be targeted and prosecuted and patriarchal structures and structures which fail to undermine violence against women must be challenged.<sup>[92]</sup> The international studies particularly emphasise the importance of the third aspect of that tripartite formulation. One UN document notes that 'explanations for violence that focus primarily on individual behaviours and personal histories, such as alcohol abuse or a history of exposure to violence, overlook the broader impact of systematic gender inequality and women's subordination... Intimate partner violence is significantly correlated with rigid gender roles that associate masculinity with dominance, toughness, male authority in the home and threats to male authority.'<sup>[93]</sup> The two foremost social researchers on perpetration of violence against women, Dobash and Dobash, have written that 'for men, violence is embedded in a net of physicality, experience, and male culture such that it is more easily used and more readily available as a resource [than for women]...violent acts may be valorized as signs of masculinity, male authority, power, and control.'<sup>[94]</sup> They emphasise the importance of the link between cultures of violence and direct violence against women.

## 3.2 – Lines of responsibility for violence against women

Defining the nature of the responsibility for violence is an important aspect in the process of defining where the priorities for State action exist.<sup>[95]</sup> It is necessary to identify the forms of responsibility for violence against women because in doing this we can identify what forms of response may be most appropriate and which forms of response must be prioritised for practical reasons (although the obligation to protect women from violence is immediate). If after analysis it appears that one aspect of responsibility bears particularly strong influence over the outcome of violence but no effective method is being employed by the state to address that line of responsibility then a gap between obligation and compliance can be identified and action may be taken to enforce duties.

Analysis suggests eight different lines of responsibility for VAW:

1. 'Individual active direct perpetrators of VAW- direct abusers as individuals (for example perpetrators of wife battery)

# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

2. Institutional active direct perpetrators of VAW- direct abusers as groups of individuals (for example State or private association policy abusing women's health or education)
3. Individual active indirect perpetrators of VAW- indirect support of VAW (for example buying pornography production of which has involved VAW)
4. Institutional active indirect perpetrators of VAW- indirect support of VAW (for example facilitating a market which enables the production and distribution of pornography involving VAW)
5. Individual neglect of direct VAW- neglecting to end VAW (for example through not intervening- not phoning police when you know VAW to be occurring)
6. Institutional neglect of direct VAW- neglecting to end VAW (for example police not pursuing criminal prosecution, hospitals not ensuring full support for battered women)
7. Individual neglect of indirect VAW- neglecting to intervene or disrupt indirect factors which recreate systematic VAW (for example supporting social norms which uphold inequality, laughing at rape 'jokes')
8. Institutional neglect of indirect VAW- neglecting to intervene or disrupt indirect factors in VAW (for example not undermining systems of inequality in the workplace- some forms of inequality in the workplace may be termed structural violence themselves and so may be determined direct violence which also increase individuals propensity to resort to physical, mental, sexual and economic violence elsewhere)'[96]

Box 1: Index of terms for responsibility analysis

*Direct*- Indicates that an action causes harm without the intervention of a 3rd party or element.

*Indirect*- Indicates that an action causes (or could cause) harm via a 3rd party or element (which could include social norms).

*Active*- Indicates that whether intentional or unintentional some action causes harm to occur.

*Neglect*- Indicates that whether intentional or unintentional some inaction causes harm to occur.

## 3.3 – Evidence relating to the sociological priority of dealing with the media

Neil Malamuth, who has done detailed social analysis work around the causes of physical violence against women has indicated that his research shows 'that the mass media can contribute to a cultural climate that is more accepting of aggression against women.'[97] However he does not suggest that this means that it is the largest contributing factor- which he indicates are different in different circumstances and he seems to believe to be closer to the trigger for violence (such as the occurrence of an argument just before physical violence).[98] However his definition of violence for this comment is far narrower- only researching physical violence and not recognising that a human rights based definition is broader. It is not possible however to take Malamuth's research as definitive in the wider context that this piece discusses. This is because he sets out to ask very specific questions about very specific forms of media- that of violent pornography.

In order to offer solutions to the problem of violence against women we should initiate investigation by assessing the contributing factors that lead to the undesirable impact. In the campaigning profession this can be known as the staggered impact chain assessment (used for both analysis of problems and then for the design of appropriate solutions).

As is noted above there are two primary factors which lead to violence against women:[99] these are an "internal propensity to use violence" and "cultural factors." [100] Both must be tackled in order to succeed in achieving an end to violence against women. As Dobash and Dobash have noted 'If violence is a form of random deviance rather than a reflection of recurring social relations, then one need not worry about the shape and form of everyday social life but only its deviations from it... It is the problem of others, the behaviours of others, and an issue for others. If, however violence is seen as intentional acts undertaken in order to achieve ends that are deeply embedded in the circumstances of daily life, it becomes an issue for us all, may affect anyone, and is about daily life.' [101] They argue that violence against women falls into the later category. It is essential therefore that we know what the causes of

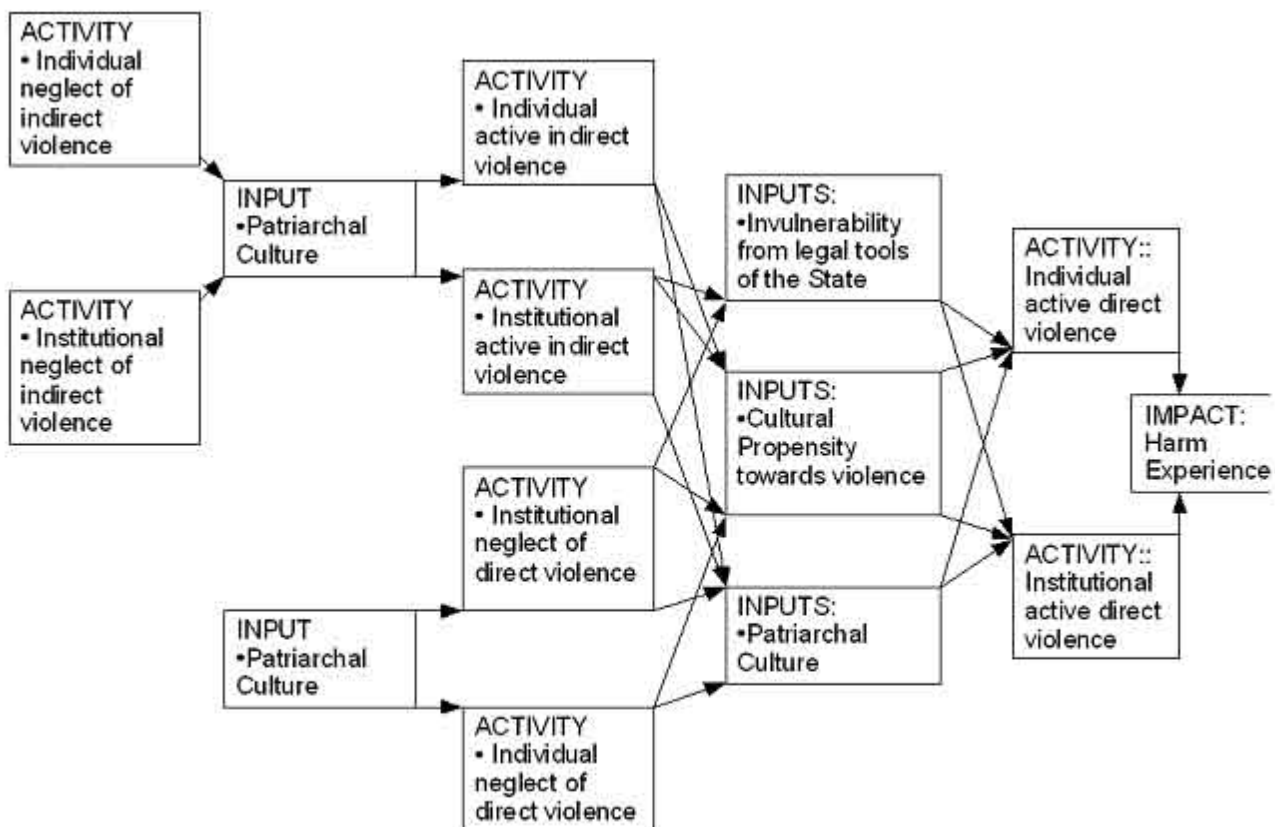
# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

violence are and attend to those areas in order to stop it. Their ground breaking, and still celebrated, study in 1979 showed that most domestic violence began with an argument and most of those arguments were of four types; 'men's possessiveness and jealousy, disagreements and expectations concerning domestic work and resources, men's sense of the right to punish "their" women for perceived wrongdoing, and the importance to men of maintaining or exercising their power and authority.'[102] These arguments seemed to all result from various forms of an attitude which views men as more important than women.

It is clear from reports of many interviews that violent men do not consider males and females to have the same rights to negotiate their roles in social relations: 'I was always wanting to show her who was boss.'[103] 'I've battered her that many times, she should know when to stop her crap.'[104] 'Each day I was raped, beaten, kicked, punched, smacked, choked, degraded or yelled at by Mr. Traynor. Sometimes all of these. He constantly belittled me and humiliated me. I believed Mr. Traynor would have killed me and others if I did not do what he demanded of me.'[105] Violent men have a sense that men and women have different rights and roles within relationships (whether those are deemed "public" or "private"). It is this gendered sense which exists both within the violent individual's own conception of identity and as a composite part of the culture within which they operate which allows violence to occur and to repeat itself with such ferocity and frequency. Identifying an individual's gender as being either masculine or feminine indicates that they hold an identity which fits into a fairly binary categorisation. Masculine individuals are attributed with holding traits such as strength, control, wealth, power or influence, a propensity to use violence as a legitimate form of communication, confidence, fearlessness and introversion. Feminine individuals are attributed with holding traits such as being caring, having devotion to family, mothering, abhorring violence, shyness and extroversion.

It is useful to think about the flow diagram inputs, activities and outputs which lead to the impact of violence against women. A full diagram would indicate many more inputs, activities and "responsibility threads" however this piece is orientated towards the investigation of a single branch and so the chart is left incomplete.



# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

The flow chart clearly suggests that the process that results in the impact 'harm experienced' almost always derives, at least in part, of socially constructed inequitable or discriminatory cultures (described in the chart as 'patriarchal culture'). It is necessary to investigate this relationship further, it is the process of creating gendered individuals (and the way that they sit within institutions) within the context of dynamic social communities.

According to the flow chart above people's social/behavioural approaches relating to violence against women are created through both natural stimuli and the experience of social cultures. It is extremely difficult to say exactly where the boundaries lie however what is clear is that social education/ experience can either catalyse or regulate social cultures. Andrew Linklater has noted that:

'All societies have harm conventions which define what is permissible in relations with other human beings, what is obligatory, and what is officially proscribed; all societies have conventions which define harm and identify the most serious forms of injury that can befall members of the community... [they are] an essential part of the social regulation of human behaviour within bounded communities.'[106]

The problem with violence against women is that no such harm convention has been adequately established and where some form of convention does exist which should regulate the use of such violence they are not well enough adhered to. The legal conventions, acts and regulations are in place, internationally and often nationally, but social conventions are too often operating towards the opposite effect; they are entrenching gendered discrimination and inequality. With these comes violence (see lines of responsibility above). Unfortunately most of the evidence available relates to studies in the USA and Western Europe.

The media is one of the major creators of patriarchal culture in modern times; advertising is perhaps the most influential segment of the media. Jean Kilbourne has noted that 'we are exposed to over 1500 ads a day, constituting perhaps the most powerful educational force in society.'[107] 'Scientific studies and the most casual viewing' (of advertising) 'yield the same conclusion: Women are shown almost exclusively as housewives or sex objects.'[108] One is 'pathologically obsessed by cleanliness and lemon-fresh scents' while the other is 'a mannequin... conventional beauty is her only attribute'.[109] Furthermore advertising greatly increases individuals propensity to violence and especially to gendered forms of violence against women by creating what some commentators call 'violent white masculinity'.[110] '[Although] there are significant differences between the various masculinities, in patriarchal culture, violent behaviour is typically gendered male... violent behaviour is considered masculine.'[111] As Jackson Katz notes '[one] need not look very closely to see how pervasive is the cultural imagery linking various masculinities to the potential for violence [for example] the movie industry, which has introduced into the culture a seemingly endless stream of violent male icons.'[112] 'The appeal of violent behaviour for men, including it's rewards, is coded into mainstream advertising in numerous ways: from violent male icons... overtly threatening consumers to buy products, to ads that exploit men's feelings of not being big, strong or violent enough by promising to provide them with products that will enhance those qualities.'[113] Yet another example of the media creating patriarchal cultures is the portrayal of gendered relations in popular culture; especially music and music videos. It is possible to note various examples of degrading music and music which glamorises violence towards women. Examples in popular culture of such lyrics include the following:

'A lapdance is so much better when the stripper is crying... yes i find it so much more of a thrill when she grinds me against her will... yes a lapdance is so much better when the stripper is crying.'[114]

'Bithces ain't shit but hoes and chicks...licks on his nuts and sucks his dick, get the fuck outta ya then outta ya house and make a quick run.'[115]

'you look tarty love; its my birthday. I'll buy you a Barcardi love; its my birthday and you know i'm having a laugh; its not my birthday. You can find me in the pub, with a pint of bud, look lively love, you can make a fiver love if you just let me see your jugs...'[116]

It should be noted that in no way is the media a homogenised and constantly belittling negative stakeholder in the development of gendered social relations. However much of popular media's portrayal of women and men and their

# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

relations is extremely influential in creating and recreating cultures which regulate violence. Those cultures currently catalyse violent acts rather than inhibit and prohibit them.

## Part Four: International Law Relating to Freedom of Expression

Part four will consider a human rights based legal definition of “freedom of expression” and the scope of the right. It will then determine, in general, what State’s obligations under the International Covenant on Civil and Political Rights (ICCPR) and how the interpretation of those duties may be understood in the twenty first century.

### 4.1 – A human rights based legal definition of “freedom of expression”

Article 19 of the ICCPR is the primary article for the international protection of freedom of expression, it reads:

‘1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided in law and are necessary:

a) for the respect of the rights and reputation of others;

b) for the protection of national security or of public order (*ordre public*), or of public health or morals.’[117]

It is possible to derogate ‘in time of public emergency which threatens the life of the nation’[118] from article 19 of the ICCPR.

‘The Universal Declaration, the International Covenant and the American Convention all protect the right “to seek, receive and impart information and ideas”. The European Convention does not expressly protect the right to “seek” information and ideas, but it is widely assumed to protect this right implicitly. The African Charter does not expressly protect the right to impart information or to receive opinions and ideas, but discussions of the African Commission suggest that these rights may be implicitly protected.’[119]

As noted above article 19 of the ICCPR paragraph 3 limits the scope of the right to freedom of expression in order to ensure respect individual rights and reputation and in order to protect national security, public order, *ordre public* and public health or morals. Article 20 goes further and specifically requires that ‘Any advocacy or national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.’[120] Defining what expressions would fall outside of the scope permissible under these standards is difficult because ‘speech that a government views as advocating hatred may be regarded by many individuals as the legitimate expression of political belief’.[121] This issue will be explored further below when attempting to define the extent to which the media should (or shouldn’t) be regulated under international law relating to violence against women.

### 4.2 – State obligations to ensure freedom of expression

As with all of the rights in the ICCPR obligations relating to article 19 on freedom of expression are activated via the gatekeeper article 2 under which ‘Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to it’s jurisdiction the rights recognised in the present covenant, without distinction...[and] undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions or the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised.’[122] Furthermore article 2 also creates obligations to ensure effective remedy for

# **To What Extent Should States Regulate the Media Under International Law Relating to Violence**

Written by Will Tucker

those who's rights have been violated.[123]

The requirement to "respect and to ensure" indicates that states incur obligations of respectful, protective and fulfilling natures. The obligation to "take the necessary steps... to adopt legislative or other measures as may be necessary" ensures that States are empowered to take steps in any field, and of any variety in order to ensure that the right is upheld, the specific mentioning of legislative measures indicates the priority that such measures take amongst the variety that may be available.

[The major conventions] set forth essentially the same three part test for determining the legitimacy of restrictions on freedom of expression: 1) any restriction must be provided by law; 2) it must serve one of the legitimate purposes expressly enumerated in their texts; and 3) it must be necessary.'[124]

## **Part Five: To What Extent Should States Regulate the Media Under International Law Relating to Violence Against Women?**

In order to work out the extent to which states should regulate the media under international law relating to violence against women it is necessary to utilise the process identified in part one section two of this piece; this is the process that has been followed throughout this piece. What is clear is that both the right to freedom from violence against women and the right to freedom of expression both entail obligations on the state of respectful, protective and fulfilling types. Nothing in this piece is supposed to destroy either of these rights; the purpose here is only to identify the ways which and the extent to which one may or may not regulate the other.

First it was necessary to identify the terms of the two rights concerned. Violence against women was defined as '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'.[125]The right to be free from this violence (a right held predominantly by women but also by men) was constructed from rights including the right to life and security, freedom from torture, inhuman and degrading treatment, the right to the highest attainable standard of health and importantly the right to be free from discrimination and the right to equality. The terms for the right to freedom of expression were defined and included the freedoms to hold and express opinions to impart and seek information and to use any media to do this. However it was recognised that these freedoms may be limited in order to protect others rights and or reputation and to protect national security and or public order.

It has been established above that "conflicts" between rights may be reconciled through at least four methods: identifying any "absolute" language in the rights terms, identifying time priority- obligations of immediate or progressive realisation natures, the identification of the right as a gatekeeper for other rights, the ability to derogate or not from the right in time of national emergency and the centrality of the right to human capability and or dignity. On each of these tests the right to be free from violence against women appears to be of higher priority than the right to freedom of expression.

When identifying other relevant obligations it was identified that entailed within the obligation to end violence against women were obligations to set a specific national strategy for tackling violence against women and an obligation to include within that, where relevant a strategy for changing cultures which lead to violence and an obligation to take temporary special measures as relevant to that strategy.

It was acknowledged that many lines of responsibility may be identified for causing direct and indirect violence however almost all derive from a culture which enables, indeed encourages, perpetrators of both indirect and direct violence to continue to cause harm. The media was identified as a major contributor towards the creation and recreation of such cultures.

I propose therefore that states consider taking temporary special measures to limit freedom of expression within the media so that highly gendered portrayals of social relations be limited and more equitable and less discriminatory situations and practices are encouraged through the media. The extent of limitation within each state should be different, due to their different circumstances, however in general limits to the portrayal of women and men should be

# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

especially regulated in formats such as advertising, popular music, films and television and associated celebrity news. Areas that should not be overly regulated relate to social and political news and academic media where such regulation should be monitored, evaluated and debated. States which do undertake such measures should monitor, evaluate and regularly review the impact that regulation has upon freedom of expression and should ensure that limitations are proportional and necessary.

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Written by Will Tucker

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# **To What Extent Should States Regulate the Media Under International Law Relating to Violence**

Written by Will Tucker

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[3] A campaign is 'An organised course of action to achieve change.' and may include political advocacy, media work, popular mobilisation and legal action. ('Amnesty International Campaign Manual', Amnesty International-International Secretariat, 2<sup>nd</sup> edition 2001, AI Index: ACT 10/002/2001, p.12, <<http://www.amnesty.org/resources/pdf/campaigning-manual/campaigning-manual.pdf>> accessed 08-05-07)

[4]'General Comment No. 13 The right to education' Committee on Economic Social and Cultural Rights, E/C.12/1999/10, 08/12/99, accessed 24/12/2006, Paragraphs 46-47 <[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/ae1a0b126d068e868025683c003c8b3b?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ae1a0b126d068e868025683c003c8b3b?OpenDocument)>'General Comment No. 14 *The right to the highest attainable standard of health*' Committee on Economic Social and Cultural Rights, E/C.12/2000/4, 11/08/2000, accessed 24/12/2006, Paragraph 33 <[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument)> [5] Ghandhi, 'Art.1.1, International Covenant on Civil and Political Rights,' in 'Blackstone's International Human Rights Documents 5<sup>th</sup> Edition' Oxford:

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Written by Will Tucker

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[42] 'General Recommendation No. 19 (11th session, 1992), Violence against women', CEDAW Committee, Division on the Advancement of Women website, para.6, accessed 07-05-07 <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom19>>

[43]Supra no.33, Article 1, [44]Quoted in Case no.8, 'Andrews v Law Society of British Columbia Supreme Court of Canada' in Emerton, Adams, Byrnes and Connors, 'International Women's Rights Cases' Cavendish, London, April 2005, page 129 [45]Supra no.5, [46]Supra. no.44, page 135 [47]Supra. no.44,page 135 [48]Supra. no.44, pages 136-143, especially important are paragraphs on pages 137-138 and pages 141-142 [49]Supra. no.44, page 141 [50]Supra. no.44, page 142 [51]Supra. no.44, page 141 [52]Supra. no.44, pages 142-143 [53]Supra no.33, Art.4, page 94 [54]'The protection of women against violence' Recommendation No. R (2002) 5 of the Committee of Ministers and Explanatory Memorandum, Council of Europe, Equality Division, Directorate of Human Rights, Strasbourg, November 2004, page 52 [55]Ibid, [56]Ibid, [57]Ibid, [58]Ibid, [59] Supra no. 42 para.7,

[60] Ibid, para.6

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# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

[62]Supra no.33 Art.3

[63]Supra no.33 Art.3 [64]Supra no.33 Art.5, page 95 [65] 'General Recommendation No.25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination Against Women, on temporary special measures' UN Division for the Advancement of Women para.18, emphasis added, [66] 'General Comment 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights' Committee of the International Covenant on Economic, Social and Cultural Rights, Office of the High Commissioner for Human Rights, August 2005, para. 15, emphasis added [67]'General Comment 28, Equality of rights between men and women (article 3)' Committee on Civil and Political Rights, Office of the High Commissioner for Human Rights, March 2000, CCPR/C/21/Rev.1/Add.10, para.29

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<<http://daccessdds.un.org/doc/UNDOC/GEN/N05/521/12/PDF/N0552112.pdf?OpenElement>> Combined initial and second periodic reports of States parties Turkmenistan, CEDAW/C/TKM/1-2, November 2004, CEDAW 35<sup>th</sup> Session, para.53-55,

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Sixth periodic report of States parties Romania, CEDAW/C/ROM/6, December 2003, CEDAW 35<sup>th</sup> Session, p.12-13,

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[70]Combined third, fourth and fifth periodic reports of State parties Cyprus, ibid, para.64

[71]Combined second, third, fourth and fifth periodic report of States parties Malawi, Supra

no.69, para.4.3.4 [72]Sixth periodic report of States parties Guatemala, Supra no. 69, para 80

[73] Concluding comments of the Committee on the Elimination of Discrimination against Women: Guatemala, CEDAW/C/GUA/CO/6, June 2006, CEDAW 35<sup>th</sup>Session, para.27-28,

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[74]Ibid, para.28 [75] Second periodic reports submitted by States parties in accordance with articles 16 and 17 of the Covenant Addendum EL SALVADOR, E/1990/6/Add.39, February 2005, Regular session 2005, para.53, Initial reports submitted by States parties under articles 16 and 17 of the Covenant Addendum TAJIKISTAN, E/C.12/TJK/1, May 2006, Substantive Session 2006,

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Written by Will Tucker

para.46,

<http://daccessdds.un.org/doc/UNDOC/GEN/G06/424/20/PDF/G0642420.pdf?OpenElement>Third periodic reports submitted by States parties under articles 16 and 17 of the Covenant Addendum THE NETHERLANDS, E/1994/104/Add.30, August 2005, Substantive Session 2005, para.19 (regarding minority ethnic groups rather than women)

<http://daccessdds.un.org/doc/UNDOC/GEN/G05/436/60/PDF/G0543660.pdf?OpenElement> [76]Second periodic reports submitted by States parties in accordance with articles 16 and 17 of the Covenant Addendum EL SALVADOR, Supra. no.36, para.53 [77]Steelworkers v Weber, 443 US 193 (1979, no.78-432) (Page 443 U.S. 193, 195 para.2)

<http://supreme.justia.com/us/443/193/case.htm> [78]Justice Learning, 'Affirmative Action', accessed 12-01-08, [http://www.justicelearning.org/justice\\_timeline/Issues.aspx?IssueID=1&TimelineID=42&TimelineEventID=1137](http://www.justicelearning.org/justice_timeline/Issues.aspx?IssueID=1&TimelineID=42&TimelineEventID=1137) [79] Adarand Constructors, inc., Petitioner's. Federico Pena, Secretary Of State for Transportation Et Al, No. 93-1841. January 1995, US Supreme Court, (Find Law, accessed 07/04/07)

[http://caselaw.lp.findlaw.com/scripts/printer\\_friendly.pl?page=us/000/u10252.html](http://caselaw.lp.findlaw.com/scripts/printer_friendly.pl?page=us/000/u10252.html) [80]Case no.10 'Kalanke v Freie Hansestadt Bremen' in Emerton, Adams, Byrnes and Connors, 'International Women's Rights Cases' Cavendish, London, April 2005 paragraphs 17-19 & 22, p.164 [81]Supra no.5, article 26, emphasis my own, [82]Supra no.42, paragraph 9 [83]Supra no.1, p.102-104 para.363- 373, [84]Amnesty International 'It's in our hands: Stop violence against women.', London, Amnesty International Publications, 2004, accessed 12-01-08, page 3 <[http://www.amnesty.org/en/alfresco\\_asset/cfc9225f-a36d-11dc-9d08-f145a8145d2b/act770012004en.pdf](http://www.amnesty.org/en/alfresco_asset/cfc9225f-a36d-11dc-9d08-f145a8145d2b/act770012004en.pdf)> [85]Supra no.1, p.52-55 Table 2,

[86]Supra no.1, p.53 Table 2, [87]Supra no.1, p.52-55 Table 2, [88]Supra no.1 p.102, para. 364 [89]ICM for Amnesty International UK, 'Sexual Assault Research Summary Report', delivered by Amnesty International UK, Published 12 October 2005, page 3 [90]Supra no.89, page 5 [91]ICM on behalf of the End Violence Against Women coalition (UK), 'UK Poll of 16-20 year olds', London, ICM, November 2006, page 8 [92]Prof. Dr. Carol Hagemann-White with the assistance of Judith Katenbrink and Heike Rabe, 'Combating Violence Against Women Stocktaking study on the measures and actions taken in Council of Europe States' Directorate General of Human Rights, Strasbourg, Germany, 2006 page 16,17,19,20,21, and especially pages 38-40 UNFPA, 'Programming to address violence against women: 10 case studies' New York, UNFPA, pages 17-20, [93]Supra no.1, page 29 [94] Dobash and Dobash, 'Rethinking Violence Against Women' Thousand Oaks, California, Sage Publications, 1998 page 164 [95] My theory on the lines of responsibility analysis, developed using a similar framework of Andrew Linklaters relating to International Harm, was presented to the Department of Sociology Postgraduate Conference in Aldeburgh, Suffolk, on the 29<sup>th</sup> of February 2007, see conference paper 'Rights and Responsibilities: Men Ending Violence Against Women' accessed 07-05-07 Andrew Linklater, 'Citizenship, Humanity, and Cosmopolitan Harm Conventions' in International Political Science Review (2001), Volume 22, No.3, pages 261-277, *Linklater describes Harm Conventions as 'harm conventions which define what is permissible in relations with other human beings, what is obligatory, and what is officially proscribed; all societies have conventions which define harm and identify the most serious forms of injury that can befall members of the community. Harm conventions are an essential part of the social regulation of human behaviour within bounded communities and they are no less necessary for regulating relations with other*

# To What Extent Should States Regulate the Media Under International Law Relating to Violence

Written by Will Tucker

*societies.*' (p.264) Andrew Linklater, 'The Problem of Harm in World Politics, in 'International Affairs' no.78, 2, (2002) pages 319-338 Linklater outlines five 'Varieties of Harm' which are 'Deliberate harm in relations between independent political communities', 'Deliberate Harm caused by governments to their own citizens', 'Deliberate harm caused by non-state actors', 'Unintended harm' and 'Negligence'. (p.327-331)

[96]Adapted from paper 'Rights and Responsibilities: Men Ending Violence Against Women' supra no.95, see box for index [97]Neil Malamuth, 'Aggression against Women' in 'Pornography and Sexual Aggression' editors Neil Malamuth and Edward Donnerstein, London, Academic Press Inc, pages 19-52, page 40 [98]Ibid, page 40-41 [99]See p.24 [100]Supra no.97, page 39 [101]Supra no.94 page 141 [102]Supra no.94 page 144 [103]Supra no.94 page 154 [104]Supra no.94 page 15 [105]Catherine MacKinnon 'Are Women Human? : : and other international dialogues' USA, Belknap Press of Harvard University Press, 2006, [106]Supra no 94, Andrew Linklater, International Political Science Review 22(3), page 264 [107]Jean Kilbourne, 'Beauty and the Beast of Advertising' in 'Gender, Race and Class in Media' editors Gail Dines and Jean Humez, London, Sage, page121- 132, page121. [108]Ibid, page122 [109]Ibid, page122 [110]Jackson Katz 'Advertising and the construction of Violent White Masculinity' in 'Gender, Race and Class in Media' editors Gail Dines and Jean Humez, London, Sage, page133- 141 page 133 [111]Ibid, page133 [112]Ibid, page134 [113]Ibid, page136 [114]The Bloodhound Gang, 'A Lapdance is so much better when the stripper is crying.' Track 14 from the album 'Hooray for boobies' Interscope Records, February 29, 2000 [115]Dre Dre, 'Bitches ain't shit' Track 15 from the album 'The Chronic' Death Row Koch, May 22, 2001 [116]The Streets 'In Da Pub' cover of 50 Cent track 'In da club' from the album 'Get rich or die tryin' Interscope Records, February 6, 2003 [117]Supra no.5 Art.19, [118]Supra no.5 Art.5, [119]Article 19 International Centre Against Censorship 'The Article 19 Freedom of Expression Manual: International and Comparative Law, Standards and Procedures', Great Britain, The Bath Press, August 1993, p.17 [120]Supra no.5 Art.20, [121]Supra no.119, page 167 [122]Supra no.5 Art.2, [123]Supra no.5 Art.2, [124]Supra no.119, pages 16-17 [125]Supra no.42. Paragraph

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