

Ending Violence against Women in Indonesia: State Policy and Practice

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Abstract

Public international law mandates States to promote protect and fulfil human rights. State obligation at the international level is determined by international law which is comprised in the various treaties a State ratifies as well as customary international law. When a State assumes international obligations, it is obliged to comply with its international obligations premised on the due diligence principle. The research critically analyses the evolution, development and application of the due diligence principle in international law and presents a discourse on its utility in clarifying State obligation to eliminate violence against women. It then investigates Indonesia's international obligation to end violence against women and what this obligation entails in the island of Java by focusing on specific forms of violence against women and by analyzing how far these efforts are in response to treaty obligations. Finally, the research investigates the perspectives of civil society in the assessment of Indonesia's efforts, achievements and challenges in fulfilling the obligations and finally identifies and makes recommendations in areas where due diligence may be particularly useful and /or further used in eliminating violence against women.

Keywords: *Gender-based violence against women, international law, due diligence*

1. Introduction

Public international law mandates States to promote protect and fulfill human rights. State obligation at the international level is determined by international law is comprised in the various treaties a State ratifies as well as customary international law. When a State enters into a treaty, it is obliged to comply with treaty obligations at two levels, namely, it should discharge its obligation by ensuring that -

- a. it, the State and its agents, comply with treaty obligations and do not violate any of these obligations; and
- b. private individuals (non-State actors) in the State do not violate these obligations;

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In the context of gender-based violence against women, it denotes a State's obligation to take "reasonable" action to prevent, protect against, prosecute, punish and provide redress for violence against women. A State is obligated to take positive measures to prevent human rights abuses before they occur, such as adopting relevant laws and policies, and to effectively prosecute and punish them once they have occurred.

Traditionally the State was only held accountable for violations of human rights committed by its agents. The due diligence principle extends State obligation to preventing human rights abuses by non-state actors. By extending liability for acts of violence perpetrated by non-state actors to the State, public international law recognizes that violence against women, whether committed by State or non-State actors constitutes human rights violations.

This also means that the State has the obligation to enter the so-called "private sphere" where most instances of violence against women take place. The State had traditionally been excluded from the private sphere, which was viewed as the private family realm, and limited instead only to the public sphere which is usually male-dominated. The principle of due diligence has helped rupture the artificial "public/private sphere" divide, as well as State/non-State actors dichotomy.

The due diligence principle on State obligation is emerging as a gauge on what States are required to exercise in the discharge of their international obligations as States are required to comply with their obligations with due diligence. Due diligence can thus be refined in order that it may be utilized as an innovative and effective means of guiding States to fulfill their obligations.

2. Methodology

Firstly, the research analyses legal instruments, cases and international documents on State obligations of Indonesia; it then assesses Indonesia's initiatives to end violence against women in the context of fulfilling Indonesia's State obligations; and finally it employs in-depth interviews of civil society organisations working on violence against women on their assessment of States' discharge of their due diligence principle. Triangulation process will

involve verifying these responses with government agency(ies) and lawyers/human rights commission.

Content analysis of international legal instruments on Indonesia's State obligation

Content analysis of legal instruments is crucial in determining Indonesia's due diligence obligation. In so far that Indonesia is part of the UN system and has ratified international treaties, the treaty obligations are binding. Indonesia was selected due to the many human rights treaties ratified by Indonesia.¹ Indonesia ratified CEDAW in 1984.² By ratifying CEDAW, the government of Indonesia made a legally binding commitment to implement the rights under the treaty including the right of women to be free from gender-based violence.

Major human rights treaties such as the International Covenant on Civil and Political Rights, the International Covenant on Economic Social and Cultural Rights (ICESCR) as well as CEDAW have expert bodies which are quasi-judicial organs established by States that provide "authoritative determination" of State obligations arising under each treaty. In this regard, the expert bodies' comments and recommendations on Indonesia's obligations will form an important source for conceptualizing Indonesia's obligations.

Still, international law is a nebulous 'gray' area of law. It is in fact generally referred to as "soft law" consisting of an intermingle of binding treaty obligations and weak or no enforcement mechanism. It is also highly politicized. Even where States had entered into binding treaties, States are merely required to uphold their obligations in good faith.

Non-treaty obligations on the other hand are not binding, but persuasive. These include declarations, policy reports that elucidate international human rights norms and standards, reports of UN Special Rapporteurs and the ASEAN Declaration of Human Rights.

There are however some obligations that are regarded as customary international law due to their almost universal acceptance. The commitment under the Universal Declaration of Human Rights for example constitutes customary law. Some might also argue that due to their nearly universal ratification, both the Convention on the Rights of the Child and CEDAW similarly constitute customary law.

In its General Recommendation no. 19 (1992), the Committee on the Elimination of All Forms of Discrimination Against Women (hereafter “CEDAW Committee”) found 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.”³ The 1993 Declaration on the Elimination of Violence against Women urges States to “[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”⁴ This point was later reiterated in the Platform for Action of the Beijing World Conference on Women.⁵

The principle of due diligence as applied to human rights generally and violence against women specifically has evolved over time. The 1988 Velázquez Rodríguez case of the Inter-American system clearly sets out the due diligence principle by stating, “An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of an act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.”⁶ The standard applied in this case is not one of strict liability, but rather one of reasonableness.⁷ It is based on principles of non-discrimination and good faith in application.

3. Indonesia’s Obligation

State obligations are difficult to assess. Indonesia has adopted various strategies to end violence against women.⁸ Yet incidences of VAW that is deeply connected to gender discrimination addressed by CEDAW and other human rights treaties, continue to be pervasive in Indonesia. Statistics indicate that women continue to be subjected to different forms of violence – physical, sexual, psychological and economic – both within and outside their homes.⁹ This may be indicative of lack of attention paid to the observance of international obligation.

Assessment of Indonesia’s initiatives to end violence against women

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The research interrogates practices in Indonesia's formulation, implementation and enforcement of policies, laws, procedures and processes toward this end. This includes Indonesia's strategies on preventing violence against women, protecting survivors, prosecuting cases, punishing perpetrators and providing redress for victims/survivors (5P's).

Indonesia has passed the following laws:

- Placement and Protection of Indonesian Workers Abroad (2004). This law guarantees equal rights and gender justice but does not recognise specific vulnerabilities faced by and lack of protection of domestic workers. It also protects only documented migrant workers.
- Law on witness and victim protection (2006). This law ensures victims/witnesses are safe to complain/seek redress. But the law is limited to those who saw, heard or experienced, but not others who know of violence. Of late however, cases of survivors being prosecuted for 'defamation' or 'false accusation' are not uncommon.
- The Marriage Act perpetuates stereotypes by providing that men are heads of households. The Constitutional Court repealed a provision of this law that only mothers and their immediate families (and not fathers) are responsible for children born out of wedlock. Every year over 50 million children are born without birth certificates, making them vulnerable to abandonment, abuse, early/child marriage and trafficking. The repeal of this provision may potentially reduce the number of children born without birth certificates.
- Legislative decentralisation (local government autonomy) has seen proliferation of gender discriminatory regulations that control women's behaviour, provide prohibitions on immoral relationships and create penal sanctions which are more commonly imposed on women than men. As of 2013, there were 347 discriminatory by laws in 141 regencies and cities. (Komnas Perempuan)
- 2006 directive from the Ministry of Health banned doctors and nurses from conducting female genital mutilation but in 2010, the Ministry withdrew this regulation and authorised 'female circumcision by medical practitioners (contradicts CEDAW GR 14 on female circumcision, GR 19 on VAW and GR 24 on women and health)

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- Under the Anti-Pornography Law, pornography is defined as pictures, sketches, photos, sounds ... conversation, gestures, other communications shown in public with salacious content or sexual exploitation that violate the moral values of society. This law has caused widespread concern due to its potential of being used to control women's behaviour. The law was challenged but its validity upheld by the Constitutional Court.
- Despite anti-trafficking laws, legal enforcement against trafficking is weak due to the need for trans-region investigations to establish trafficking.
 - In depth interview of key personnel working in organisations working on VAW on their assessment of Indonesia's discharge of its due diligence obligations

The research adopts a qualitative method, namely, in-depth interviews for gathering and analysing data. Interviews will be conducted with key personnel working in women's civil society organisations (CSOs) in Java. The reason CSOs will be approached as opposed to other stakeholders is because CSOs are often the first level of assistance sought by victims/ survivors. CSOs also often facilitate women's access to government facilities and remedies and undertake advocacy and outreach programmes.

While State programmes, policies and laws may be obtained from State reports, these reports are often silent on the impact of these initiatives. It is not enough to know of State's initiatives, it is crucial that implementation and impact of these initiatives be examined. Whether existing strategies are effective depend on how the strategies are implemented.

The interviews probe respondent's perception of State action in discharging its obligation, the effectiveness of these actions and suggestions for improvement. Java is selected as an appropriate target population as it constitutes 60% of Indonesian overall population. Java also dominates Indonesia politically and economically.

Interviews were conducted with the following CSOs –

In Jakarta: LBH-APIK, East Jakarta; LBH Jakarta, Jakarta; Kalyanamitra, Jakarta; YayasanPulih, South Jakarta; Mahadirka, Jakarta; CEDAW Working Group; Ardhanary Institute, South Jakarta.

In Semarang: LBH Apik, Semarang; Legal Resource Centre, KJ HAM, Bandung

In Bandung: PasundenDurebang; SAPA Institute; and Yayasan Jaringan Relawan Independen (JaRI);

In Yogyakarta: SahabatWanita; and Sapda

4. Interviews

The data is presently being transcribed and translated. A preliminary study of the questionnaire responses indicates that –

Prevention:

The culture of violence is “dominant”. There are few prevention programmes, and whatever programmes there are have not “reached the grass roots” and are short-termed. There was a national action plan on violence against women but the plan was discontinued in 2009. The Ministry of Women Empowerment and Children Protection (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak – KPPA) initiated a programme to create women-friendly and children-friendly cities. The Ministry however has shifted its priority to children’s issues. Even then, its child-friendly cities aim to provide spaces for children to play rather than address the issue of sexual violence against female teenagers.

The most known preventive programmes are those by the National Commission against Violence against Women (KOMNAS Perempuan) such as 100 days without violence booklet and 16 days’ activism against violence against women. Although an independent commission, respondents considered it a government entity.

Protection:

Police response is not always positive. Despite domestic violence laws, police officers themselves appear not convinced that the domestic violence legal process is “essential”. The prosecution and judges often share similar views. Questions that suggest victims/survivors are to be blamed for the violence are still raised, even by judges in court. Consequently, victims/survivors would face secondary trauma.

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Regarding medical services, few hospitals have specialised units for patients who are victims/survivors of violence.

Prosecution:

Women who encounter violence may not be aware how to seek help. Governmental services need to be publicised and expanded to outlying islands and rural areas. Culture, negative social perception of women, lack of education and awareness and family pressure continue to serve as deterrents against women seeking help to stop the violence. Girl victims/survivors of sexual violence may also be expelled from school. These reasons contribute to the high attrition rate of cases from reporting to judgment is high. Sometimes, the perpetrator settles with the victims'/survivors' families (for example, fathers) and victims/survivors are pressured to accept the settlement. There is no recommended police or prosecutorial responses to withdrawal of cases except for cases involving the girl child where the law requires the cases to be investigated irrespective of whether there is an existing report.

Education and training of police, prosecutors and judges are also essential. Currently there are insufficient numbers of female prosecutors. The process also needs to be streamlined so victims/survivors are not required to re-tell the experience to the different agencies. Certain questions should not be asked of the victim/survivor in court, for example, what underwear she was wearing, what was her dressing, whether she fulfilled her 'religious duties'.

Punishment:

The usual punishment is jail or fine. To be more effective, perpetrators should also be compelled to undergo 'rehabilitation' programmes during their incarceration. A record of abusers may prevent repeated violence by the same perpetrator. Furthermore, women should not be prosecuted for having brought complaints. There have been instances where the employer sues the complainant and the accused sues the victim/survivor (for example for defamation).

Provision of redress and reparation:

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Currently the law focuses on punishing the perpetrator. The law should expand to also address the victims'/survivors' rights, restitution, compensation, and healing. The victim/survivor may face social stigma, family pressure, loss of financial support, loss of self-confidence, expulsion from school and societal isolation. Therefore, she needs to be empowered to re-build her life with dignity) after the violence through support groups, skills development, education on gender and violence against women and even informal education. There are no known programmes of this nature provided to the victims/survivors.

5. Conclusion

In order to properly address the violence committed against women, particularly violence committed by non-State actors, it is imperative to have a deeper understanding of the due diligence principle so that we can crystallize and add content to this obligation. What does “acting with due diligence” mean? This deeper understanding is needed to provide guidance on what actions are expected from them in order to be able to track their own progress.

The findings of this research will be used to develop recommendations for States to assist stakeholders, including government officials setting policies and programmes towards effectively discharging their international obligation to eliminate violence against women.

6. Reference

¹Treaties ratified by Indonesia include the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention against Torture, International Convention on Protection of Migrant Workers, Convention on the Rights of the Child, CEDAW, Convention on Rights of Persons with Disabilities, Convention on Political Rights of Women, Convention on Transnational Organised Crime and Protocol to Suppress and Punish Trafficking in Persons, Especially Women and Children.

²Indonesia also ratified many other international conventions requiring state responsibility in response to various forms of human rights grievances. These treaties include International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (IESCR), Convention against Torture, International Convention on Protection of Migrant Workers, Convention on the Rights of the Child, Convention on Rights of Persons with Disabilities, Convention on Political Rights of Women and the Convention on Transnational Organised Crime and Protocol to Suppress and Punish Trafficking in Persons, Especially Women and Children.

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³CEDAW, General recommendation 19: Violence against women, 11^o session, 1992, U.N. Doc. HRI/GEN/1/Rev.1 at 84 (1994), para. 9.

⁴United Nations, Declaration on the Elimination of Violence against Women. General Assembly resolution 48/104 of 20 December 1993. A/RES/48/104, February 23, 1994, Article 4.c.

⁵United Nations, Report of the Fourth World Conference on Women, Beijing, September 4 to 15, 1995, Beijing Declaration and Platform for Action approved at the 16^o plenary session held on September 15, 1995. A/CONF.177/20/Rev.1, para. 1245b.

⁶Velázquez Rodríguez v. Honduras, Judgment of July 29, 1988, Inter-Am. Ct. H.R. (ser. C) No. 4, para. 172.

⁷Ibid, para. 174.

⁸See CEDAW country reports

⁹KOMNAS Perempuan