

**STATE POLICY AND PRACTICE ON ENDING  
VIOLENCE AGAINST WOMEN AND ITS DUE  
DILIGENCE IN INDONESIA: PERSPECTIVE OF  
CIVIL SOCIETY ORGANIZATION (CSOs)**

**ZARIZANA @ IZANA BINTI ABDUL AZIZ**

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**by**

**ZARIZANA @ IZANA BINTI ABDUL AZIZ**

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## LIST OF ABBREVIATIONS

5Ps	The five areas of State obligation to exercise due diligence to eliminate violence against women, namely prevention, protection, prosecution, punishment and provision of redress and reparation.
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) is an international multilateral treaty that was adopted in 1979 by the United Nations General Assembly. Its main purpose is for States to undertake measures and establish public institutions that ensure protection of women from discrimination.
CSO	Civil society organisation is an independent organisation, usually set up as a non-profit or charitable organisation, typically to address a social issue, in this case, women's human rights or violence against women.
Gender	The social construction attached to being of a designated sex, for example masculinity for males and femininity for females.
GR	General Recommendation. General Recommendations are authoritative statements issued by the treaty bodies, for example, CEDAW Committee, that explains and clarifies State obligations under the treaty.
International Law	International law refers to public international law, namely the norms, rules and standards recognized as binding amongst States.
MoWE	Ministry for Women's Empowerment and Child Protection (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak)
P2TP2A	Centre for Integrated Services and Empowerment for Women and Children (In Indonesian, Pusat Pelayanan Terpadu dan Pemberdayaan untuk Perempuan dan Anak) set up by the MoWE (mandatory for all districts/municipalities and provinces) under the Prevention of Domestic Violence Law (UU PKDRT).
States	Organised political apparatus under one government in a specific country. In international law, obligations undertaken by States need to be complied with by all State apparatus and any violation of the obligation by any State

apparatus or State actor is deemed to be a violation by the State.

UN	The United Nations
UN CEDAW	Committee of experts established under the Convention on the Elimination of All Forms of Violence against Women
UNGA	United Nations General Assembly
VAW	Violence against women is any form of violence that is directed at a woman because of her sex or gender or that affects women disproportionately. Violence against women includes physical abuse as well as threats, verbal abuse, emotional abuse, economic deprivation, harassment and more.

**DASAR DAN AMALAN NEGARA MENGHAPUSKAN KEGANASAN  
TERHADAP WANITA DAN UJI TUNTAS DI INDONESIA:  
PERSPEKTIF BADAN MASYARAKAT SIVIL (CSO)**

**ABSTRAK**

Negara mempunyai tanggungjawab untuk mempromosikan, melindungi dan memenuhi hak asasi manusia. Kewajiban Negara ditentukan di bawah undang-undang antarabangsa seperti terkandung dalam undang-undang adat antarabangsa dan juga pelbagai perjanjian yang diratifikasi oleh Negara. Apabila sebuah Negara menanggung kewajiban antarabangsa, Negara wajib mematuhi kewajiban antarabangsanya berdasarkan prinsip uji tuntas. Di Asia Tenggara, prinsip uji tuntas masih kurang dikaji secara akademik, dan lebih-lebih lagi berkaitan dengan tanggungjawab Negara untuk mengakhiri keganasan terhadap wanita. Adalah genting untuk mengontekstualisasikan prinsip uji tuntas dan menghasilkan pengetahuan kritikal berkenaan penerapan dan pelaksanaan prinsip uji tuntas berkenaan keganasan terhadap wanita. Kajian ini menganalisis evolusi, pengembangan dan penerapan prinsip uji tuntas dalam undang-undang antarabangsa dan membincangkan penggunaannya dalam menjelaskan kewajiban Negara untuk menghapuskan keganasan terhadap wanita di Jawa, Indonesia. Ia kemudian menyelidik kewajiban antarabangsa Indonesia dalam mengakhiri keganasan terhadap wanita tertumpu di Pulau Jawa dengan memberikan perhatian kepada bentuk-bentuk keganasan terhadap wanita. Ia juga menganalisis sejauh mana tindakan-tindakan yang diambil bergantung kepada kewajiban antarabangsa Negara. Kajian ini menyelidiki

perspektif masyarakat sipil dalam menilai tindakan, pencapaian dan cabaran Indonesia dalam memenuhi kewajiban dan akhirnya mengenal pasti dan membuat cadangan-cadangan sewajarnya dalam usaha menghapus keganasan terhadap wanita. Kajian ini meliputi kajian meja, temubual mendalam dengan wakil 14 pertubuhan yang bermandat menghapuskan keganasan terhadap wanita di Jawa, Indonesia tentang penilaian mereka mengenai pelaksanaan Indonesia atas kewajipannya. Untuk tujuan triangulasi data yang diperoleh dari temubual organisasi masyarakat sipil, temubual mendalam telah diadakan dengan pegawai dari Kementerian Pemberdayaan Wanita dan Perlindungan Anak (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak), mekanisme Negara yang ditugaskan untuk memberdayakan wanita dan menghapuskan diskriminasi gender termasuk kekerasan terhadap wanita dan komisioner dari Suruhanjaya Nasional Penghapusan Keganasan terhadap Wanita (Komisi Nasional Anti-Kekerasan terhadap Perempuan), institusi hak asasi manusia nasional yang diberi mandat untuk menghapuskan keganasan terhadap wanita. Hasil kajian menunjukkan bahawa Indonesia telah mengambil langkah-langkah besar untuk melupuskan keganasan terhadap wanita. Indonesia telah menerapkan mekanisme (Kementerian, Suruhanjaya Nasional dan penguatkuasaan hukum, umum dan khusus). Indonesia juga telah mengatur program pencegahan, melakukan latihan dan berkolaborasi dengan CSO. Langkah tindakbalas Indonesia merangkumi langkah-langkah untuk melindungi mangsa dan memberi perkhidmatan, serta mengadili dan menghukum pelaku. Namun, masih banyak yang perlu dilakukan agar Indonesia mematuhi sepenuhnya kewajipannya. Langkah-langkah ini telah dikenalpasti oleh



pertubuhan civil dan agensi serta mekanisme Negara. Semoga dapat dicapai, dengan kemampuan politik, inovasi dan komitmen.

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**ABSTRACT**

States have the obligation, under international law, to promote, protect and fulfill human rights as articulated in customary international law and treaties that a State ratifies. A State is obligated to comply with its obligations in accordance with the standards determined by the due diligence principle. In South East Asia, the due diligence principle is still academically under-researched, and even more so in relation to the accountability to end violence against women (VAW). There is an urgent need to contextualize the due diligence principle and to produce critical knowledge on the adoption and implementation of the due diligence principle in relation to VAW. The research critically analyses the evolution and development in human rights of the due diligence principle and its importance in crystallizing State obligation to eliminate VAW in Java, Indonesia. It examines Indonesia's discharge of this obligation in Java by focusing on specific forms of VAW and analyzing how far Indonesia's measures comply with treaty obligations. The research further examines civil society organizations' (CSOs) perspectives and their assessment of Indonesia's measures, achievements and challenges in compliance with its due diligence obligations. Finally it makes recommendations in areas where the due diligence principle may be particularly useful in eliminating VAW. The research includes desk research, in-depth interview of key personnel in 14

CSOs working on VAW on their assessment of Indonesia's discharge of its due diligence obligations. For purposes of triangulating the data obtained from CSOs interviews with officials from the Ministry for Women's Empowerment and Child Protection, the State mechanism tasked with empowering women and eliminating gender discrimination including VAW and commissioners of the National Commission on the Elimination of VAW, the national human rights institute mandated to eliminate VAW. The findings indicate that Indonesia had undertaken substantial measures toward eliminating VAW. Indonesia's responses include setting up institutional mechanisms, implementing prevention programmes, undertaking training and collaborating with CSOs. Indonesia also has measures to protect the survivor and provide services, as well as prosecute and punish perpetrators. However, there are more that needs to be done for the State to fully comply with its due diligence obligations. These measures have to some extent been identified by both CSOs and State agencies and mechanisms. They are achievable, with political will, innovation and commitment.

# CHAPTER 1

## INTRODUCTION

### 1.1 Introduction

In Indonesia, one in three women have experience VAW in their lifetime (MoWE & UNFPA, 2016). Further, 22% of women “who have ever been in relationships had experienced violence by their intimate partners” (WHO, 2021).

This is slightly lower than data from the World Health Organization (WHO) that globally an average of one in three to one in four women globally “who have ever been in relationships had experienced violence by their intimate partners”. More particularly, 27% of women globally and 33% percent of women in South East Asia “who have ever been in relationships had experienced violence by their intimate partners” (WHO, 2021).

Another study in Asia and the Pacific showed that in 2017, the most number of all women killed by their family members including intimate partners, was in Asia (UNODC, 2019). While only 20% of all killings were of women, 58% of all killings of women were committed by family members (including intimate partners) while a third of all killings of women were committed by their current or former intimate partners (ibid). Another UN study also found that 70% - 80% of male respondents indicated that their motivation for rape pertains to “sexual

entitlement”; that is their belief that they have a right to sex, irrespective of consent (Fulu et al., 2013).

The World Bank estimates that in some countries, VAW cost up to 3.7% of individual countries’ GDP – more than double what most governments spend on education (World Bank, 2019).

States have adopted various measures to address and respond to VAW (Aziz & Moussa, 2016). The question is whether these measures have met the threshold of what needs to be done and what must be done to eliminate VAW.

This research interrogates State obligation to protect women and how States have discharged their obligation to protect women from violence and promote their dignity, safety and security. It unpacks the current political and legal impetus for States to comply with their obligations and the content of that obligation. It does this by examining what Indonesia, the largest State in South East Asia, has undertaken as assessed by forefront civil society organizations in Java.

## **1.2 Feminist perspective on violence against women (VAW)**

Violence against women (VAW) is an act of gender-based violence "that results in, or is likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (UNGA,

1993a:Article 1). It is violence committed against a woman because of her gender or that affects women disproportionately.

While the definition of VAW as adopted by the United Nations extends beyond physical violence and includes non-physical violence such as verbal violence and sexual harassment, State measures still tend to focus on physical violence. For example, the CEDAW Committee urged verbal violence, including disparaging remarks “that demean women and contribute to the patriarchal system which discriminates against women” be criminalised (CEDAW, 2009).

Economic violence is another form of violence that is still struggling to find its way into State narratives (Chinkin et al., 2016; *V.K. v. Bulgaria*, 2008).

VAW is one of the most prevalent and extreme forms of discrimination against women. Yet it enjoys undue impunity. It further severely impairs if not nullifies the exercise of their rights. “It manifests in a continuum of multiple, interrelated and recurring forms, in a range of settings, from private to public, including technology-mediated settings and in the contemporary globalized world it transcends national boundaries” (UN CEDAW, 2017b:3).

According to Hobbes, the basic state of nature is for the strong to dominate the weak (Hobbes, 1651). Political philosophy suggests that the use of force and rules against violence are the historical impetus for society-formation away from the Hobbesian “state of nature”, yet these obligations to and of the state with its citizens must be voluntarily assumed, as if they were stipulated in a

voluntary contract (Moulton, 1980:180). Individuals sacrifice some of their freedoms for State protection (ibid). Yet, in no other area is the legitimacy of State regulation to eliminate violence more aggressively challenged than the elimination of VAW.

Furthermore, over time, VAW has been deconstructed to expose its firm foundations in structural violence and gender inequality.. Carole Pateman in her seminal deconstruction of the social contract points out that the narrative is incomplete (Pateman, 1988). Political philosophers, said Pateman, insist that all people are naturally free and equal save and except that men naturally have a right to dominate women (Pateman, 1979). Clearly, women had been excluded from the civil sphere of the social contract but included into the private sphere. Pateman argues that this is a deeply cultural narrative that has been challenged by feminists.

Feminist reinterpretation maintains that in actuality, there are two dimensions to this social contract (Thompson et al., 2018). The first is the contract that justified State government of citizens and the second is the sexual contract that justified men's government of women. Both contracts interact to entrench the patriarchal structure of the modern state (ibid).

Men's 'natural' governance over women has frequently been and is still justified in the name of tradition, culture and social norms. This governance, is, where necessary, enforced through violence. VAW is 'natural', so the argument goes, and sanctioned in our respective cultures; an unquestioned requisite for

the maintenance of harmony in the family and community. Women are not only told to accept violence, they are denied any role as equal and active contributors to the development and production of culture (Ertürk, 2007).

The cultural justification also overlooks cultural formations and the formulation of the cultural narrative. It disguises political and socio-economic foundations of the dynamics of culture. Whose narratives of traditions and group identity should be preserved? The politics of culture is tightly bound to law making, power and privilege with cultural preservation invariably privileging dominant members of society (Aziz, 2013). Consequently, the influence of culture over normative laws and rights means that culture is not external to the law.

VAW, opine the CEDAW Committee, is one of the “fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated” (UN CEDAW, 2017b:4). Understanding VAW, therefore, means analysing acts of violence, exploring aggregated risk factors and structural causes, its impact on women as well as the intersectionality between VAW and other issues, for example, ethnicity, poverty and religion.

Culture was a foundational consideration in the establishment of the modern Indonesian State. Indonesian Constitution was influenced by the philosophy of Professor Dr. Supomo, the father of the Indonesian Constitution, who laid the essence of the Constitution. The Constitution was informed by the “indigenous social structures, culture, and the "mystical spirit" of Indonesian society”



largely drawn from the “Javanese terms of an aristocratic [pnyayi] elite and its attendant ideas about state power and authority”; where individuals, can exist only in relation to the whole and that no conflict between individual and whole can be countenanced (Suryakusuma, 1996:93).

In line with the concept of the integralistic state is the “azas kekeluargaan”, or "family principle," with paternalism infusing Indonesian social organization and relationships (ibid). This paternalistic idealism is reflected in the Marriage Law of 1974 which defines the husband as head of household and the wife as mother and homemaker. The proposal of Mohamad Hatta, that the Constitution incorporate human rights provisions, was rejected (ibid).

Law-making processes today continue to be influenced by political interests. Komnas Perempuan in its report within the years 2015 - 2019 opined that “the law-making processes was influenced by political interests rather than the needs of citizens who have the rights for the fulfillment of their human rights” (Komnas Perempuan, 2017:40).

Yet, culture is neither static nor monolithic. It is evolving, dynamic and subjected to political interest. Therefore, VAW cannot be said to be a bounded practice within particular cultures. It is embedded in notions of patriarchy, inequality and discrimination, which manifests as VAW.

Indonesia joined the United Nations in 1950, the year after its independence. Despite a slight glitch in its membership in 1965, Indonesia adopted and

domesticated international policies into national regulations including human rights instruments relating to women's human rights. However, its lack of efficacy in implementation makes it "difficult for victims to access justice when they deal with the justice system and law enforcement officers" (Komnas Perempuan, 2019:40).

### **1.3 International law, human rights and the due diligence principle**

International human rights, developed post World War II, are supposed to represent our collective triumph of the rule of law, reason, justice and freedom. The Universal Declaration of Human Rights was adopted by the United Nations in 1948 (UNGA, 1948). The Universal Declaration of Human Rights guarantees equal rights and dignity to all.

However, little attention was given to ensuring women are equally able to enjoy a life of dignity, free from fear. As late as 1990, feminists and women's rights advocates contend that "despite a clear record of deaths and demonstrable abuse, women's rights are not commonly classified as human rights" (Bunch, 1990). Feminists took the struggle to recognize women's rights as human rights and to eliminate VAW to the United Nations. VAW was formally recognized as a violation of human rights at the Vienna Conference in 1993 (UNGA, 1993b).

Separately, philosophers began critiquing the injustice and oppressiveness of the then current paternalistic and patriarchal paradigms. Alternative discourses including the rights discourse found ultimate justification in ideas like freedom,

human rights and justice. Duncan Kennedy argues that rights-reasoning allows us to measure political and cultural aspirations and values (Kennedy, 2009).

Following from that, international human rights developed to firstly, extend State obligation to promote, protect and fulfill human rights to include the promotion, protection and fulfillment of women's human rights. Secondly, State obligation over violations of human rights by State actors was extended to mandate States to take reasonable measures to prevent human rights abuses before they happen and to effectively prosecute and punish perpetrators if abuses occur, irrespective of whether the perpetrators are State or non-State actors. This due diligence principle, as it is commonly known, holds States accountable not only for acts by State actors but also by non-State actors.

Setting the scope and extent of State obligation is critical in VAW. This is because while VAW may be committed by the State and its actors (for example rape in police custody), it is most often committed by non-State actors — for example, an intimate partner or a male relative (UNGA, 2006). In the first example (rape in police custody), women enjoy a negative right not to be violated by State actors, in this instance, the police. The State is directly accountable for a breach of this negative right because the State (through the police) also had custody of the woman and had absolute control of the environment.<sup>1</sup> In the domestic violence example, the State was not the

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<sup>1</sup> For example, the rape of two migrant women in a police lockup. See PhilStar Global, 2002. <https://www.philstar.com/headlines/2002/09/26/177474/kuala-lumpur-cop-cleared-rape-pinay>; Mageswari, 2003. Applications by cop convicted in rape case rejected, The Star, 14 August 2003. <https://www.thestar.com.my/news/nation/2003/08/14/applications-by-cop-convicted-in-rape-case-rejected/>

perpetrator of the violence. The State may still be accountable even though the violence cannot be directly imputable to the State.

The due diligence principle is a critical tool in the formulation of accountability. Because VAW is overwhelmingly committed by non-State actors, By making the State accountable, This is because the due diligence principle allows public international law to recognise that irrespective of who perpetrates it, VAW constitutes human rights violations for which the State is accountable.

#### **1.4 Problem statement**

Statistics, as indicated above, show that VAW is a universal phenomenon with high rates of prevalence, on a global scale generally and in Indonesia particularly. Women are subjected to different forms of violence –sexual, physical, psychological and economic within their homes and in public spaces.

In Indonesia, there are two main institutions whose data is widely referred to when discussion VAW, namely the National Commission on Violence Against Women (Komnas Perempuan) that releases its annual data through End of Year Notes (Catatan Akhir Tahun/Catahu) and and the Ministry for Women's Empowerment and Child Protection (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak or MoWE) through its Online Information System for the Protection of Women and Children (Noer et al., 2021). However, other than the study by Statistics Indonesia in 2016 referred to above that indicates 1 in 3

women have experienced VAW in their lifetime there has not been another systematic

Between the years 2015 – 2019, Komnas Perempuan recorded 293,220 cases in 2015, 321,752 cases in 2016, 259,150 cases in 2017, 348,466 cases 2018 and 406,178 cases in 2019 (Komnas Perempuan, 2019). The highest form of VAW recorded were intimate partner violence. Yet, only survivors of marital violence are protected. Survivors and perpetrators who are not or no longer married are not protected (Komnas Perempuan, 2019). These women experience physical, sexual, psychological and economic violence as well as exploitation. They are also subjected to information communication technology facilitated (ICT) violence, often in the form of dissemination of non-consensual intimate images (Komnas Perempuan, 2019).

Other forms of ICT VAW include malicious distribution of non-consensual image, online harassment, cyber stalking/tracking, spamming, identity theft, cyber bullying, sexting, cyber recruitment, and hacking. Furthermore, violence against girls, including incest, have also increased (Komnas Perempuan, 2019). Sexual violence by non-intimate partner is also high.

Meanwhile, the Ministry for Women's Empowerment and Child Protection (Kementerian Pemberdayaan Perempuan dan Perlindungan Anak or MoWE)'s data indicate there were only only 1,567 cases of VAW in 2019 (MoWE, 2020).

Noer et al. (2021) suggest that data from MoWe and even Komnas Perempuan are not reflective of the reality occurrences of VAW. In support of their contention, the authors pointed to both Komnas Perempuan's and MoWE's zero violence data from Maluku, North Maluku, Papua and West Papua that had zero violence in contrast to other studies that indicate 60% of ever partnered Papua men had committed domestic violence and 44% had raped their partners (Sunarsih & Triani, 2020). The contention of the scarcity and unreliability of data on VAW in Indonesia is supported by other scholars (Nilan et al., 2014). Other scholars posit that data may also be subjected to respondents' under-reporting as VAW, and in particular domestic violence, is viewed as a private matter (Bennett et al., 2011; Putra, 2019).

Despite the high rate of violence, societal acceptance of VAW remains. The acceptance of which is drawn from deep-seated patriarchy and justified in the name of culture and tradition. So ingrained are these justifications, that violence is even deemed natural. These perceptions, maintained by those in power who are also those who control the cultural narrative, have also shaped political ideologies and legal doctrines both internationally and domestically.

Gradually though, feminists and rights philosophers had challenged these narratives and initiated transformative reforms; reforms that re-defined equality, challenged patriarchy and deconstructed the States laws and policies, at the international and domestic levels. It also inscribed States with the legal obligation to effectively prevent and respond to VAW.

State obligation to prevent, respond and ultimately end VAW gained momentum with the adoption of CEDAW in 1979. Article 2 mandates States to “condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”. It then lays down seven points of action for States to adopt legislative, policy and other measures to prohibit gender discrimination and promote gender equality. Further impetus was provided when the CEDAW Committee issued General Recommendation 19 categorically underlining that VAW is a form of gender discrimination (UN CEDAW, 1992).

A standard was required to assess States’ discharge of their obligation to end VAW. The due diligence principle on State obligation has emerged as a gauge on what States are required to do to comply with their international obligations to respect, protect and promote human rights (Ertürk, 2006). In General Recommendation 28, the CEDAW Committee emphasized that gender-based violence violates CEDAW irrespective of whether CEDAW specifically mentions VAW and States parties have a due diligence obligation to prevent, investigate, prosecute and punish such acts of gender-based violence (UN CEDAW, 2010).

Due diligence is premised on a State taking reasonable action to discharge its obligations. Due diligence connotes a standard of reasonableness, that is, States are obligated to take “reasonable” action. Distilling the due diligence principle can create effective and novel ways to guide States to fulfill their obligations.

Due diligence is also a principle that is familiar in other disciplines such as business and engineering and therefore may appeal to States' sense of ethics.

States had also traditionally vacillated from entering into the "private sphere", which it declared as the realm of the family; regulating instead violence occurring only to the "public sphere". This led to assertions that violence occurring in the home was beyond State regulation. Consequently, perpetrators are seldom punished. The due diligence principle has contributed to the rupturing of the artificial "public/private sphere" divide, as well as State/non-State actor's dichotomy (Ertürk, 2006).

Though international human rights is recognized as the universal standard by which individual rights are to be promoted, protected and fulfilled, and States are obligated, with due diligence, to promote, protect and fulfill their human rights mandate, the use of the due diligence principle to exhaustively assess compliance is under-researched.

Said Yakin Ertürk, the former Special Rapporteur on VAW, its causes and consequences, "there remains a lack of clarity concerning its [the due diligence] scope and content" and a "glaring need to establish reliable statistics and indicators concerning VAW and the evaluation of interventions designed to eliminate it" (Ertürk, 2006). Further, the due diligence standard tends to be applied to State response to VAW, with "relatively less work done on the more general obligation of preventing violence" (Ertürk, 2006; Ertürk, 2009).



While research of the due diligence principle as it pertains to individual countries have been undertaken, they are often limited to the theoretical framework (Pearce, 2014; Stoyanova, 2020). Further they are also limited to specific measures in particular countries, such as legislative framework and dispute resolution mechanisms (Qazi Sada, 2021; Richards & Haglund, 2018) or specific sources, such as due diligence as elucidated by the CEDAW Committee or the Istanbul (European) Convention (Byrnes & Bath, 2008; De Vido, 2020; Jurasz, 2015).

The researcher had earlier undertaken a seminal research into State obligation to eliminate VAW, affirming that in the context of gender-based VAW, a State is required to take positive measures to prevent human rights abuses before they occur, and to effectively prosecute and punish them once they have occurred, irrespective of where it has occurred and who the perpetrators and survivors are.

In the research, the researcher identified five areas of State responsibilities namely prevention, protection, prosecution, punishment and provision of redress (5Ps) in order to holistically address VAW. The research included primary research with over 300 civil society organizations across 45 countries globally as well as focus group discussions in 5 regions of Asia, Africa, Europe, Latin America and the Caribbean as well as Middle East and North Africa, and four panel discussions at UN side events. The findings of the research were utilised to unpack and interrogate how States apply the due diligence principle and to develop the Due Diligence Framework on State Accountability for Eliminating VAW (Aziz & Moussa, 2016).

In South East Asia, the due diligence principle on State accountability is similarly academically under-researched, and even more so in relation to the accountability to end VAW. Indonesia's compliance with its due diligence obligation is as academically under-researched, despite it being the largest country in South East Asia and the fourth most populous country in the world as well as the tenth largest economy in terms of purchasing power (World Bank, 2021).

Indonesia last reported on its compliance with its CEDAW obligations in 2012. In the CEDAW Committee concluding observations, the Committee while noted the establishment of the mechanisms to remove discrimination against women, there was still much to be done to strengthen these machineries, repeal or amend discriminatory laws identified by these mechanisms, raised awareness of the religious community to support the advancement of women, develop a national gender policy, raise awareness of decision-makers, adopt a law on gender equality, criminalise female genital cutting/mutilation, remove harmful practices and stereotypes, collect disaggregated data on VAW, encourage reporting and remove impunity for perpetrators of VAW, address root causes of VAW (UN CEDAW, 2012). In 2014, the Committee on Economic, Social and Cultural Rights echoed the observations of the CEDAW Committee in urging Indonesia to repeal discriminatory laws against women and strengthen Komnas Perempuan (UNCESCR, 2014).

There is an urgent need to contextualize the due diligence principle and to produce critical knowledge on the adoption and implementation of the due diligence principle in relation to VAW in Indonesia.

### **1.5 Research questions**

This thesis presents new knowledge on State discharge of its direct and due diligence obligation in the island of Java, Indonesia. The research interrogates practices in Indonesia's development and implementation of laws, policies, programmes and other measures toward this end. This includes Indonesia's strategies on preventing VAW, protecting survivors, prosecuting cases, punishing perpetrators and providing redress for survivors (5P's).

Based on the problem statement the research questions for this study are:

- (1) What is feminist perspective on the international legal obligation to end VAW?
- (2) What are Indonesia's international obligations to end VAW? In this context, how long has Indonesia accepted these obligations and what is required of Indonesia in fulfilling these obligations?
- (3) Whether and how, the international legal principle of State obligation to exercise due diligence (due diligence principle) is useful in clarifying State obligation to eliminate VAW?

- (4) Based on civil society's responses, how has Indonesia dealt with the issue of prevention, protection, prosecution and investigation, punishment and provision of redress as it pertains to the island of Java, Indonesia?

## **1.6 Objectives**

The research has the broad aim of critically studying the evolution of the due diligence principle in international human rights and to analyse its utility in unpacking State obligation to end VAW by examining its applicability to Indonesia. The study further has the following specific objectives:

- (1) To investigate Indonesia's international obligation to end VAW and what this obligation entail;
- (2) To study Indonesia's efforts to date in dealing with VAW by concentrating on particular forms of VAW and examining how these measures relate to Indonesia's treaty obligations;
- (3) To examine civil society organizations' perspectives and assessment of Indonesia's measures, in particular its successes and challenges in complying with its obligations to prevent VAW, protect survivors, prosecute cases, punish perpetrators and provide redress for survivors;

- (4) To identify issues, challenges and gaps in relation to Indonesia's measures to eliminate VAW; and
- (5) To identify and propose recommendations in areas where the due diligence principle is applicable in eliminating VAW.

## **1.7 Scope of Thesis**

The thesis focuses on VAW prevalent in Java. The breadth of Indonesia, with its over 17,000 islands, population of 277 million as well as its diversity in customs, ethnicity, practices means that any research into forms of VAW and State measures to prevent and respond to violence will be too disparate to make any findings on the effectiveness of particular responses across Indonesia (World Population Review, 2021). While Java constitutes approximately 19% of the landmass of Indonesia, over 60% of Indonesia's population live in Java. For the time being, the capital of Indonesia, Jakarta, is in Java (BBC, 2022). Given its population and the fact that Jakarta is situated in Java, many active CSOs are also concentrated in Java.

Not all CSOs approached agreed to participate in the research. The CSOs who agreed to be interviewed are located in Jakarta, West Java (Bandung) and Central Java (Yogyakarta and Semarang). Consequently no CSOs in East Java, though approached, were included in this research. Nor were there any CSOs from Banten.

The thesis looks at different manifestations of VAW, including domestic violence, sexual assault and rape, trafficking, child sexual exploitation, child marriage, temporary marriage, female genital cutting, sexual harassment, online/cyber VAW and gender-discriminatory control over women's anatomy.

The research does not however look at VAW in humanitarian crisis contexts (conflict). Nor does it cover VAW during or arising from political conflicts or natural disasters. The research also does not include violence against female politicians.

Data from the primary research is gathered from CSOs rather than survivors. This is because CSOs experiences are drawn from varied and multiple sources, including their support of diverse survivors as well as their activities such as legal reform campaigns, research, education, outreach and awareness-raising.

On the other hand, interviewing survivors requires coaxing survivors to speak openly about intimate aspects of their personal lives and their pain. The quality of the data also depends on more variables, such as how comfortable survivors feel during the interview, how many times during the interview a survivor is asked about violence, survivor perception of the sincerity and empathy of the interviewer (Ellsberg, et al., 2001; Prior, 2018). Furthermore, a survivor's awareness of her being part of a research can encourage her to think and reflect on the issues under consideration (Cassell et al., 2020). Participant reflexivity that is stimulated by their involvement in a particular research project can result

in a variety of potentially unexplored consequences that may skew the findings (ibid).

## **1.8 Significance of thesis**

The thesis is significant in two aspects. Firstly it uses international human rights standards to comprehensively assess State measures to prevent and respond to VAW. While scholars have written about the due diligence principle and its applicability to State actions, these are by and large undertaken through literature and desk review rather than primary research (Dempsey, 2007; Byrnes & Bath, 2008; Chinkin, 2014; Stoyanova, 2020; Qazi Zada, 2021). Nor have they employed a comprehensive standard setting due diligence framework developed specifically for VAW.

In this study, State measures are assessed using the Due Diligence Framework on State Accountability to Eliminate Violence against Women co-developed by the researcher (Aziz & Moussa, 2013). The Framework was conceptualised for purposes of a multi-year multi-country research on State measures to eliminate VAW. It was developed and refined based on the findings of the research. The findings of this global research also indicate that while States differ in resources, political systems and structures as well as geo-politico-cultural influences, it is possible to develop universal norms and standards on State obligations to eliminate VAW. This is because VAW is not a bounded practice within particular cultures or political systems. It is embedded in notions of patriarchy, inequality and discrimination, which manifests as VAW.

Consequently it is possible to apply a universal standard setting framework to assess the discharge of State obligations to eliminate VAW.

The Due Diligence Framework on State Accountability (5Ps Framework) is divided into five areas, referred to as the 5Ps of prevention, protection, prosecution, punishment and provision of redress and reparation. Each of the 5Ps is further clarified with Guiding Principles to help States systematically unpack the due diligence principles and understand what must be done to meet their due diligence obligation. The 5Ps Framework together with Guiding Principles constitutes a tool to comprehensively measure State Accountability. The Framework incorporates every stage that is required to holistically prevent and respond to VAW. Based on this Framework, States have an obligation to prevent or take measures to avert VAW, protect survivors from further VAW and provide timely and interventions, prosecute and punish VAE perpetrators and provide redress and reparation to survivors to enable them (and sometimes others) to live without VAW.

Secondly, it is also extremely rare that civil society organizations (CSOs) are given the space to weigh in on an academic research. CSOs provide unique voices which are so often looked over. The research engaged with CSOs as key informants in assessing State compliance with their due diligence obligation. This is because, while State measures can be ascertained through State consultations, reports, websites, laws and policies, the effectiveness of State measures can only be ascertained by engaging with third parties actively involved in preventing and responding to VAW. Furthermore, with respect to



VAW, civil society and social movements, including CSOs have often been at the forefront of instigating transformative changes (Htun & Weldon, 2012; Sosa, 2020). Consequently their assessments of State measures are critical.

The CSOs participating in the research not only provide crisis intervention services to survivors of violence but also initiate education and awareness raising programmes, review of State policies, laws and programmes as well as campaigns and collaborations with States to better these laws, policies and programmes. CSOs also multiply their reach and knowledge through these activities which enrich their knowledge and understanding.

The fact that this thesis combines both a comprehensive treatment of the due diligence principle as it pertains to State Accountability through the tool of the Due Diligence Framework as well as incorporates the unique voices of CSOs as key informants makes the thesis significant.

## **1.9 Summary**

In summary, international human rights law represents an optimal avenue to achieve universal rights for all individuals that respects intersectionality and diversity. VAW is not a bounded practice within particular cultures. It is embedded in notions of patriarchy, inequality and discrimination, which manifests as VAW. Consequently it requires precepts and ideas that are capable of being universally applied. For international norms to work, collaboration between States, CSOs and other key stakeholders are also critical.

## **CHAPTER 2**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

The literature review focused on the potential of international law as a means and measure for assessing whether States had undertaken all possible measures as it reasonably can to eliminate violence against women (VAW). This includes the various instruments that established international norms and principles.

This chapter will introduce international human rights law as a means to moderate State sovereignty and establish universal norms and standards for States to promote, protect and fulfill the fundamental rights of its citizens. It will also critique international norms, in particular where it concerns VAW. In this regard, it will adopt feminists' deconstruction of international law as well as VAW.

#### **2.2 International Law in context**

The thesis employs the term international law to mean the body of principles, standards and rules and policies with which States are obligated to comply. International law can be found in international treaties and customs as practised by States. Customs are recognized when State comply with specific rules despite not having ratified any treaty. Customs may also originate or be influenced by resolutions and opinions issued by general assemblies, decisions

and opinions of international and regional tribunals, opinions and recommendations of treaty bodies and declarations (which are different from signed treaties).

Traditionally, States had sovereign power and control over its citizens and respective territories. The establishment of the United Nations (UN) in 1945, however, entrenched international law as a means to regulate international relations amongst States and the regulation of the use of force.

Parallel to these objectives, the Charter establishing the UN (UN Charter) also provides for the promotion and encouragement of “respect for human rights and for fundamental freedoms for all” within each State without distinction as to race, sex, language, or religion” (UN, 1945:Article 1(3)). The UN Charter was closely followed by the Universal Declaration of Human Rights, adopted by the United Nations in 1948 (UNGA, 1948). The Declaration lays out the fundamental human rights to be universally protected and represents our collective triumph of the rule of law, reason, justice and freedom. It is the single most influential human rights document, and acknowledged as having inspired numerous Constitutions and more than seventy human rights treaties.

The Declaration begins by recognising “the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world”, noting that disregard for human rights had led to “barbarous acts which have outraged the conscience of mankind” (UDHR, 1948:Preamble). It declares that “human rights are universal” – to be enjoyed by all people, no matter who they