



Lisa Grans

Prevention of Honour-Related Violence through the Lens of the Right to Physical and Psychological Integrity

Åbo Akademi University Press
Tavastgatan 13, FI-20500 Åbo, Finland
Tel. +358 (02) 215 3478
E-mail: forlaget@abo.fi

Sales and distribution:
Åbo Akademi University Library
Domkyrkogatan 2–4, FI-20500 Åbo, Finland
Tel. +358 (0)2 215 4190
E-mail: publikationer@abo.fi



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Åbo, Finland, 2018

ISBN 978-952-12-3745-4 (printed)
ISBN 978-952-12-3746-1 (digital)
Painosalama Oy – Turku, Finland 2018

Foreword

I feel passionate about this topic. Having worked practically with the prevention of both violence against women and honour-related violence for a number of years, I know that in practice, the measures against these two forms of violence need to differ somewhat. I was interested to find out to what extent this was reflected in international human rights law. I also realized that there was a lack of research on what precisely a State was expected to do to prevent honour-related violence in addition to adopting appropriate civil and criminal legislation and punishing violence accordingly. This drove me to start a PhD on the topic of prevention of honour-related violence.

I would like to warmly thank my supervisors, Professor Elina Pirjatanniemi and Associate Professor Magdalena Kmak, for their guidance and input and my former and present colleagues at the Institute for Human Rights at Åbo Akademi University for their support and many inspiring discussions. I would also like to express my gratitude to the Violence against Women Division of the Council of Europe for facilitating access to the preparatory materials to the Istanbul Convention, which formed the basis for my fourth article. I acknowledge the contribution to the articles made by the anonymous reviewers and the input of the reviewers of this thesis, Professor Eva Brems and Professor Aisha K. Gill, to the final version. A particular thank you is due to Dr. Brems, who agreed to act as an opponent to this doctoral thesis.

My rock and my inspiration in the writing of this thesis have been my husband Stig and my daughter Anna. Without them, I might have finalized this work long ago, but I would not have enjoyed it the way I now have.

I remain grateful for the financial support from the following donors: Eugen Schaumans stiftelse, Kulturfonden för Sverige och Finland, Otto A. Malms donationsfond, Waldemar von Frenckells stiftelse, Turun Soroptimistit and Stiftelsen för Åbo Akademi.

Turku, 14 September 2018

Lisa Grans

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1. Introduction

1.1. Setting the scene: A matter of honour

When returning from school one day, 16-year-old A is slapped in the face by her older brother and pushed into the kitchen, where her family is gathered. Her father is extremely upset and keeps yelling “What have you done, what have you done?” Her older sister cries and tells her that she is ashamed of her. It turns out that a classmate has told A’s parents that she is dating a boy in school and that everyone knows about this. Her father threatens to kill her if it is true. The rumour is not true, and A denies it, but she is slapped again and sent to her room. The family has restricted A’s social life before, but after this it gets worse and worse. Her family starts monitoring her phone calls. She is accompanied to and from school and prohibited from taking part in any extracurricular activities. During school hours, her cousin trails her every step. Even when no one is looking, she starts censoring herself, so that she should not bring any more shame on her family. It does not help. At home the threats and the violence escalate, and A overhears talk of marriage to an acquaintance of the family. She confronts her father and tells him she will not marry this person. She is beaten so badly that she has to be brought to hospital.

The fictional example above is designed to illustrate the phenomenon of honour-related violence. The factors that trigger the violence vary widely, as do the forms of violence. The common denominator in all cases of honour-related violence is the motivation behind the violence, namely to uphold family honour. This Chapter explains the context in which honour-related violence occurs.

Pitt-Rivers has defined honour as ‘the value of a person in his own eyes, but also in the eyes of his society’. ‘It is his estimation of his own worth, his *claim* to pride, but it is also the acknowledgement of that claim, his excellence recognised by society, his *right* to pride’.¹ The connotations of honour vary between different environments and groups. The understanding of what accords honour and who is entitled to honour has also varied over time. The standards have been heterogeneous and incoherent.²

My research links the definition of honour-related violence to the perceived need to protect the chastity of girls and women. Central to the concept of honour is how

¹ Julian Pitt-Rivers, ‘Honour and Social Status’ in Jean G. Peristiany (ed.), *Honour and Shame: The Values of Mediterranean Society* (Weidenfeld and Nicholson, 1965) 21.

² Unni Wikan, *For aerens skyld, Fadime till eftertanke* (Universitetsforlaget, 2003) 81.

others perceive a person's behaviour. Whether their conclusions are justified is not always decisive to the loss of honour. Moreover, honour is shared in the sense that if one family member behaves in a way that can be perceived as dishonouring, the whole family is dishonoured. Therefore, it is collectively guarded, if need be by threat or use of violence. In this manner, the likelihood of being subjected to honour-related violence disciplines the behaviour of women in all societies that support social norms on honour.³

A central element in honour-related violence is the collective understanding in a community of the necessity of families upholding their honour by exercising control over the conduct of individual family members (notably girls and women), so that these do not transgress from the sexual and social conduct that is the norm within the community. For this reason, family members punish actual or supposed digression from this conduct. The real or perceived pressure from the community to use violence can be very strong. The occurrence of honour-related violence is usually linked to collectivist thinking as well as patriarchal concepts based on the subordinate role of women and on strict gender roles for everyone in society.⁴ Gill observes that in such patriarchal value systems, women are symbolically regarded as 'vessels' that hold the family's honour and men are seen as responsible for protecting them against any behaviour that might be seen as shameful.⁵ Not only women but also men are thus required to fulfil their roles in upholding family honour.⁶

Honour-related violence is not confined to any particular community, culture, religion or social class. Honour is a very strong force in many communities and upholding it is perceived in a positive manner. Violence to protect family honour takes place in for example South and Central America, North America, Europe, South Asia, the Middle East and Africa.⁷ There is often a presumption that entire ethnic communities practice honour-related violence, while in reality this varies

³ Nazand Begikhani, Aisha K. Gill and Gill Hague, *Honour-Based Violence: Experiences and Counter-Strategies in Iraqi Kurdistan and the UK Kurdish Diaspora* (Routledge, 2016) 8.

⁴ While one might generalize by calling a society collectivist, Keskinen points out that individuals may move between individualist and collectivist positions at different times and places. Suvi Keskinen, 'Women's Rights, Welfare State Nationalism and Violence' in Ravi K. Thiara, Stephanie A. Condon and Monika Schröttle (eds.), *Violence against Women and Ethnicity: Commonalities and Differences across Europe* (Barbara Budrich Publishers, 2011) 377.

⁵ Aisha K. Gill, 'All they think about is honour': The Murder of Shafiea Ahmed' in Aisha K. Gill, Carolyn Strange and Karl Roberts (eds.), *'Honour' Killing and Violence: Theory, Policy and Practice* (Palgrave Macmillan, 2014) 190.

⁶ This and further contemplation of honour-related violence can be found in Lisa Grans, 'The State Obligation to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Case of Honour-Related Violence, (2015) 15 *Human Rights Law Review*: 695-719, 696.

⁷ Begikhani, Gill and Hague (2016) 5.

from family to family.⁸ Often, only a minority of the members of a community resorts to honour-related violence.⁹ There exists only limited research on why some individuals or families resort to honour-related violence, while others from the same community do not. Roberts has suggested an outline for a psychologically oriented motivational model to explain perpetration of honour-related violence.¹⁰

There is no universally accepted definition of honour-related violence. The Joint General Recommendation of the CEDAW Committee and the CRC Committee on harmful practices characterizes crimes committed in the name of so-called honour as 'acts of violence that are disproportionately, though not exclusively, committed against girls and women, because family members consider that certain suspected, perceived or actual behaviour will bring dishonour to the family or community'.¹¹ Desiring a more detailed definition that simultaneously clarifies that such violence is a human rights violation, I have progressively elaborated the following definition of honour-related violence in the context of international human rights law:

Violations of physical or psychological integrity by means of threat or use of violence committed by family members in the name of honour in order to enforce the sexual and social conduct that is the norm within the community.¹²

The use of the term honour in connection with violence is contentious. Human rights researchers and activists stress that there is nothing honourable about using violence against one's family members.¹³ However, I have chosen the term honour-related violence to describe the different forms of violence that take place in the

⁸ See Aisha Gill, 'Introduction: 'Honour' and 'Honour-Based' Violence: Challenging Common Assumptions' in Gill, Strange and Roberts (2014) 8.

⁹ Ibid.

¹⁰ Roberts bases the model on the theory of planned behaviour (TPB), where key factors are beliefs about the outcome of a particular behaviour, beliefs about what is expected by others and beliefs about one's ability and capacity to undertake a certain act. See Karl Roberts, 'Towards a Psychologically Oriented Motivational Model of Honour-Based Violence' in Gill, Strange and Roberts (2014) 74.

¹¹ UN Doc. CEDAW/C/GC/31 and CRC/C/GC/18 (2014), para. 28. The CEDAW Committee refers to the Committee on the Elimination of Discrimination against Women and the CRC Committee to the Committee on the Rights of the Child.

¹² This definition is a slight reformulation of the working definition adopted in Lisa Grans, 'A Right Not to Be Left Alone – Utilising the Right to Private Life to Prevent Honour-related Violence', (2016) 85 *Nordic Journal of International Law*: 169-200, 170. I have identified certain acts which generally precede and accompany (other) acts of honour-related violence, but which as of yet are unlikely to be held by international human rights bodies to violate the right to physical or psychological integrity. These are restrictions on social and sexual contacts imposed by the family. See *ibid.*, 196-197.

¹³ E.g. Veena Meeto and Heidi Mirza, 'There is nothing honourable about honour killings: gender, violence and the limits of multiculturalism', (2007) 30(3) *Women's Studies International Forum*: 187-200.

name of honour in line with the terminology used by many scholars and various international bodies. Other commonly used terms include honour-based violence, honour crimes and crimes committed in the name of so called 'honour'.

A historical perspective reveals that honour-related violence is not a previously unknown societal problem in Europe. Not very different practices were common in Europe in the 16th and 17th centuries.¹⁴ Nonetheless, several studies have pointed to the approach towards honour-related violence in Europe being based on the presumption that its victims are 'saved' into a superior and safer society, despite the rampant problem of violence against women in that very society.¹⁵

Notwithstanding the increasing public discussion of honour-related violence, in-depth legal research on the topic as well as statistics on its prevalence and forms are lacking in many countries. The specificity of honour-related violence is also debated. The concepts of gender-based violence, violence against women and domestic violence against women are all entangled with honour-related violence. I hold that gender-based violence is not a synonym of violence against women. The Declaration on the Elimination of Violence against Women defines the term violence against women as 'any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.'¹⁶ Gender-based violence has been defined as 'violence that is directed against a woman because she is a woman or that affects women disproportionately'.¹⁷ In order to make it clear that men who do not conform to the gender roles of the community can also be subjected to gender-based violence, I favour the definition that gender-based violence is 'violence that is directed against

¹⁴ E.g. Satu Lidman, *Häpeä! Nöyryyttämisen ja häpeämisen jäljillä* (Atena, 2011). Traces of these attitudes are visible in the manner we perceive violence today.

¹⁵ Tuuli Hong, 'Discourses on Honour-Related Violence in Finnish Policy Documents', (2014) 22(4) *Nordic Journal of Feminist and Gender Research*: 314-329, 321; Maria Carbin, 'The requirement to speak: Victims stories in Swedish policies against honour-related violence', (2014) 46 *Women's Studies International Forum*: 107-114, 111; Maria Carbin, *Mellan tystnad och tal, Flickor och hedersvåld i svensk offentlig politik* (University of Stockholm, 2010) 32, 145; Anna C. Korteweg and Gökçe Yurdakul, *Religion, Culture and the Politicization of Honour-Related Violence, A Critical Analysis of Media and Policy Debates in Western Europe and North America* (UNRISD Gender and Development Programme Paper No. 12, October 2010) 4. The EU survey 'Violence against women: an EU-wide survey, Results at a glance' (Publications Office of the European Union, 2014) found that one in three women (33 %) in the EU has experienced physical and/or sexual violence since the age of 15.

¹⁶ UN Doc. A/RES/48/104 (20 December 1993), Art. 1.

¹⁷ CEDAW Committee General Recommendation No. 19, para. 6.

a person on the basis of gender or sex', a formulation used for example by the UNHCR.¹⁸

The question if honour-related violence should not simply be classified as violence against women is pivotal to this research. Gill acknowledges the differences between the two, but is of the view that honour-related violence should primarily be defined as a form of violence against women in order to emphasize that it is not confined to any particular geographical regions, cultures, faiths or societies.¹⁹ While I share the concern of culturalization, I suggest a different approach. I agree that there are indeed many similarities between the two, as both forms of violence constitute gender-based violence and both consist of psychological and physical violence aiming to control and to exercise power over the person subjected to violence. Both in relation to domestic violence and honour-related violence, the perpetrator is generally a (present or former) partner or other family member. Also the physical expression of the violence is similar, ranging from psychological violence and beatings to murder.

A key factor that distinguishes honour-related violence from (domestic) violence against women is the motivation of upholding the honour of the family in honour-related cases.²⁰ There are also other important differences between honour-related violence and domestic violence. Although the majority of the victims of honour-related violence are women, it can also be directed at boys and men. If one defines honour-related violence as a form of violence against women, these victims become invisible.²¹ Furthermore, in cases of honour-related violence, there is often more than one perpetrator and a main driving force behind the use of violence is the real or perceived expectations of the surrounding community. One could speak of parallel normative systems, with the social norms on matters of honour carrying as much, and at times more, weight than the formal legal system. This implies that a person will feel obliged to follow the social norms even when he or she is aware that they violate the law.²² Meanwhile, when it comes to domestic violence, the perpetrator generally acts alone and his (or her) family and social environment will generally not encourage the violence. This is relevant in particular from a prevention

¹⁸ See www.unhcr-centraleurope.org/en/what-we-do/caring-for-the-vulnerable/violence-against-women-and-children.html.

¹⁹ Gill (2014) 4.

²⁰ In practice, it can be difficult for authorities to ascertain whether acts or threats of violence within the family are undertaken for reasons of honour or constitute domestic violence, if those investigating the case do not know what signs to look for (such as pronounced threats directly or indirectly referring to honour).

²¹ Grans (2015) 697.

²² Ibid.

perspective since it intrinsically implies that somewhat different measures are needed to address honour-related violence.

My decision to regard honour-related violence as separate from violence against women and domestic violence is consequently motivated by the necessity to take the particular characteristics of honour-related violence into account in designing preventive measures. If honour-related violence is treated as a form of violence against women, national authorities are likely to depart from the premise that the same measures can be applied to both. This research argues that doing so would not be sufficient to fulfil the obligation to prevent honour-related violence.

The research indeed rests on the premise that honour-related violence has specific characteristics that affect its prevention. Arguing that the characteristics of each form of gender-based violence should be taken into account in designing preventive measures in order to make these efficient is not novel. However, my argument is that the very characteristics of honour-related violence have the effect that States are under a legal obligation to take preventive measures that are not identical to (indeed go beyond) those that must be taken against violence against women or domestic violence in general. This argument runs like a red thread throughout my research.

There is now a growing awareness, both nationally and on the international arena, that using violence to enforce honour-based thinking violates international human rights law. Accepting a cultural defence for violence would raise a number of problematic issues.²³ While human rights law ensures respect for cultural diversity, it is not a value that automatically trumps other rights. When a specific traditional practice goes against the core values of human rights, the role of human rights law is to bring about a change in the tradition.²⁴ Van Bueren has noted that in order to be able to protect human rights effectively in the private sphere, international law must be sufficiently flexible to accommodate a wide range of different private structures and values whilst simultaneously upholding universal minimum standards for human rights.²⁵

²³ Phillips summarizes the problematic issues raised by the cultural defence as follows: It elevates cultural membership above other considerations; lends itself to opportunistic defences; sustains male power and lends itself to stereotypical representations of the non-Western 'other'. See Anne Phillips, 'When Culture Means Gender: Issues of Cultural Defence in English Courts', (2003) 66(4) *Modern Law Review*: 510-531, 513.

²⁴ Eva Brems, 'Human Rights as a Framework for Negotiating/Protecting Cultural Differences: An Exploration of the Case-Law of the European Court of Human Rights' in Marie-Claire Foblets, Jean François Gaudreault-Desbiens and Alison Dundes Renteln (eds.), *Cultural Diversity and the Law, State Responses for Around the World, Proceedings of the Colloquium 'The Response of State Law to the Expression of Cultural Diversity'* (Brussels, September 2006) 694.

²⁵ Geraldine van Bueren, 'Deconstructing the Mythologies of International Human Rights Law' in Conor Gearty and Adam Tomkins (eds.), *Understanding Human Rights* (Pinter, 1999) 597.

The emergence within the UN of efforts to address honour-related violence as a specific concern has been described for example by Connors.²⁶ The approach has been to focus on honour-related violence as a harmful practice in addition to a violation of individual rights. Harmful practices are persistent practices and behaviours grounded on discrimination based on notably sex, gender and age as well as multiple and/or intersecting forms of discrimination that often involve violence and cause physical and/or psychological harm or suffering.²⁷ This thesis has chosen not to make the obligation to eliminate harmful practices the angle from which honour-related violence is analysed as the matter has been explored elsewhere,²⁸ but rather to stress the individual right to physical and psychological integrity.

Prevention of violence is a complex and demanding task, but it is possible to prevent honour-related violence from taking place. Similarly to domestic violence, it often escalates from less severe violence over time. In addition, it is preceded and accompanied by threats of further violence. There are thus generally clear warning signs, which need to be heeded by relevant national authorities. The present research builds on the understanding that when violence is foreseeable, it is preventable. Obviously, it is impossible for States to control all human behaviour, so not every risk of honour-related violence can be eliminated. What States must do is to take measures to minimize the risks of honour-related violence. When and how this is to be done is the focus of this research.

1.2. The research process

1.2.1. Goals

The present PhD thesis aims to identify and analyse State obligations to prevent honour-related violence from the point of view of the right to physical and psychological integrity. This has the potential to assist States in adopting informed policy decisions on legislation and structures as well as on the design and resourcing of preventive measures against honour-related violence in accordance with their international human rights obligations.

²⁶ Jane Connors, 'United Nations approaches to 'crimes of honour'' in Lynn Welchman and Sara Hossain (eds.), *'Honour' crimes, paradigms, and violence against women* (Zed Books, 2005).

²⁷ Joint General Recommendation of the CEDAW Committee and the CRC Committee, para. 14.

²⁸ The obligation to abolish harmful practices, including certain forms of honour-related violence, has been explored e.g. by John Tobin, 'The International Obligation to Abolish Traditional Practices Harmful to Children's Health', (2009) 9(3) *Human Rights Law Review*: 373-396.

1.2.2. Research questions

This research aims at answering the following overarching research questions: Can the obligations of States to prevent honour-related violence be concretized (i.e. can concrete measures be deduced) or can only the result towards which the measures should strive be defined? More specifically, does the due diligence standard require States to adopt other preventive measures against honour-related violence than against domestic violence and corporal punishment against children in the home?

The five articles on which the PhD thesis is based address the question of the scope of State obligations in terms of preventing honour-related violence that encroaches upon the right to physical and psychological integrity. In order to answer this question, the articles address the following five subsets of questions, in the order mentioned below:

- 1) Can honour-related violence constitute torture or other cruel, inhuman or degrading treatment or punishment? If yes, does this entail an obligation to take preventive measures not only in individual cases but also on the societal level?
- 2) Does international human rights law oblige States to interfere in case of serious violations by family members of the right to private life in the form of honour-related violence? If so, what preventive measures are national authorities obliged to undertake?
- 3) Is there a difference in the level of protection against honour-related violence for children and for adults? Are measures designed against corporal punishment of children in the home sufficient to protect the child's right to physical and psychological integrity in cases of honour-related violence?
- 4) What does the Istanbul Convention²⁹ add to the existing legal framework in terms of prevention of honour-related violence? Can it help clarify what triggers the obligation to prevent such violence?

²⁹ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 2011, ETS 210.

- 5) What is the consequence of applying the concept of due diligence to the positive obligation to prevent honour-related violence?

The present summary aims at contextualizing and deepening the analysis presented in the five articles. With the aim of answering the overarching research questions, it addresses these wider questions:

- 1) The State's obligation to prevent private acts of gender-based violence under international human rights law; and
- 2) The ability of human rights bodies to spell out in detail the obligations of States.

1.2.3. Methods and materials

Having a background in public international law and considerable practical work experience in the human rights field influenced my research questions and consequently my choice of methods. I desired to do a theoretically sound legal analysis of State obligations that was also of practical use. My main driving force behind undertaking this PhD thesis was indeed to contribute to the legal discussion and, in the long term, policy-making, on honour-related violence. As peer-reviewed articles tend to reach a larger audience than a standard thesis, I opted to do an article-based thesis.

The research is doctrinal and employs legal research methodology. As the focus of the thesis is on preventing honour-related violence rather than addressing violence that has already taken place, the emphasis is not on State obligations in terms of adoption of (mainly criminal) legislation and meting out criminal sanctions, in other words deterrence, nor on protection of victims, as is often the case in legal research on gender-based violence. Rather, I wanted to explore what States must do to prevent honour-related violence from happening in the first place, both in individual cases and on the general level by addressing its causes. While the approach used in this research is not based on feminist theories, which Charlesworth explains briefly and to the point,³⁰ it partly responds to these by not simply 'adding women and mixing'.³¹ For example, it takes issue with the gendered nature of the understanding of torture and other ill-treatment by applying these human rights

³⁰ Hilary Charlesworth, 'Feminist Methods in International Law', (1999) 93 *American Journal of International Law*: 379-394.

³¹ Hilary Charlesworth and Christine Chinkin, *The boundaries of international law: A feminist analysis* (Manchester University Press, 2000) 50.

terms to the prevention of private acts of violence within the family.³² Furthermore, the research stresses one key underlying cause of honour-related violence, namely strict gender roles and perceptions that men are superior to women. From this follows a necessity to include conclusions regarding the addressing of honour-related violence through well-planned, policy-based measures.

The thesis is mainly based on analysis of international instruments, international jurisprudence and doctrine. My language skills enabled me to access materials mainly in English, French, Swedish and Finnish and, to a more limited extent, German. There is only limited reference to honour-related violence in these sources and therefore the selection of instruments, jurisprudence and legal literature is largely based on that concerning other forms of gender-based violence, namely domestic violence and violence against women. I also draw parallels between honour-related violence against children and corporal punishment of children in the home. The legal arguments on the positive obligations of the State to prevent honour-related violence thus depart from these sources, but are developed to take into account the specific characteristics of honour-related violence in accordance with the principle of effective rights and the principle of due diligence. The instruments selected for analysis are the key human rights conventions that have given rise to jurisprudence and doctrine relevant to the prevention of gender-based violence and other private acts of violence in the home. The conventions that have received particular attention are thus the European Convention on Human Rights, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the American Convention on Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.³³ The potential of the recent Convention on Preventing and Combating Violence against Women and Domestic Violence in the prevention of honour-related violence is also explored.³⁴ The case law included in this research reflects important standpoints on the contentious points of the thesis. These include both influential and much cited cases that define the

³² For a discussion on the gendered nature of torture, see e.g. Alice Edwards, 'The 'Feminizing' of Torture under International Human Rights Law', (2006) 19(2) *Leiden Journal of International Law*: 349-391.

³³ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 1950, ETS 5; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention), 1994, 33 ILM 1534; American Convention on Human Rights (ACHR), 1969, 1144 UNTS 123; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, 1249 UNTS 13; Convention on the Rights of the Child (CRC), 1989, 1577 UNTS 3.

³⁴ While a wider list of international instruments relevant to the right to physical and psychological integrity is included in Ch. 2.1.1, the scope of the research does not permit more in-depth analysis of those generating less jurisprudence and doctrine on the prevention of gender-based violence.

interpretation of the scope of relevant positive obligations and cases that indicate the direction in which jurisprudence might develop in the future.

As noted above, there exists no universally accepted definition of honour-related violence. In order to be able to proceed with the research, I gradually elaborated one against the background of which the legal analysis was made. This definition is found in Chapter 1.1.

There was long a tendency by general human rights bodies not to contemplate the protection offered particularly to women by the general human rights treaties, as there was a separate treaty dealing with women's rights.³⁵ Although this has certainly changed, certain aspects of the obligations of States to address gender-based violence remain vague. Situating the research within the context of the right to physical and psychological integrity of those risking honour-related violence is motivated by a desire to explore the potential of human rights norms not much referred to in connection with prevention of gender-based violence.³⁶ These rights are notably the prohibition of torture and other ill-treatment and the right to private life. Linking honour-related violence to these rights has the potential to bring the issue within the scrutiny of general human rights bodies and adds weight to arguments for preventive measures at the national level.

The doctoral thesis takes into account that honour-related violence takes a number of different forms, some of which have not been much explored from a legal point of view. The analysis does not focus on so-called honour killings, which have already been the subject of a certain amount of legal research.³⁷ Also forced marriage has been explored from the point of view of human rights law, although not in terms of the obligation to prevent such acts.³⁸ Honour-related violence can manifest itself in a number of other ways as well. Female genital mutilation (FGM) is often seen as a form of honour-related violence, as one of the reasons it is undertaken can be to

³⁵ Carin Benninger-Budel, 'Introduction' in Carin Benninger-Budel (ed.), *Due Diligence and Its Application to Protect Women from Violence* (Martinus Nijhoff Publishers, 2008) 7.

³⁶ While gender-based violence has been found to violate these rights in a number of instances mainly due to criminal law-related failures, the connection to prevention of violence has not often been made. The focus has instead remained on protection of victims.

³⁷ Literature on honour killings include Anna C. Korteweg, 'Understanding Honour Killing and Honour-Related Violence in the Immigration Context: Implications for the Legal Profession and Beyond', (2012) 16(2) *Canadian Criminal Law Review*: 33-58; Anna Korteweg and Gökçe Yurdakul, 'Islam, Gender, and Immigrant Integration: Boundary Drawing in Discourses on Honour Killing in the Netherlands and Germany', (2009) 32(2) *Ethnic and Racial Studies*: 218-238; Meeto and Mirza (2007).

³⁸ Literature on forced marriages include Mohammad Mazher Idriss, 'Forced marriages - the need for criminalisation?', (2015) 9 *Criminal Law Review*: 687-703; Alexia Sabbe, Marleen Temmerman, Eva Brems and Els Leye, 'Forced marriage: an analysis of legislation and political measures in Europe', (2014) 62 *Crime, Law and Social Change*: 171-189; Aisha K. Gill and Sundari Anitha, *Forced Marriage: Introducing a social justice and human rights perspective* (Zed Books, 2011).

ensure chastity (virginity of unmarried girls and women and fidelity of those who are married). While both FGM and forced marriages can be undertaken also for other reasons than to protect family honour, they will be referred to as honour-related violence for the purposes of this thesis. The forms of honour-related violence considered include ill-treatment (ranging from acid attacks to beatings), other invasive interference with the body (such as forced virginity examinations) and psychological violence (such as threats of violence and severe restrictions on forming social relationships). A characteristic of honour-related violence is that it does not consist of a single act, but rather a series of often escalating mental and physical violence. Opening a legal discussion about the (non)permissibility and prevention of the most common forms of honour-related violence – threats, severe restrictions of private life and ill-treatment – is important in order to identify at which point the State should interfere to prevent even more serious forms of violence.

My research departs from three key premises. Firstly, I proceed from the understanding that the key root cause underlying honour-related violence is a combination of strict gender roles and the perception that women are inferior to men. The complex phenomenon of honour-related violence also has a number of other root causes, but I focus on this primary cause. Secondly, I understand honour-related violence as differing from domestic violence against women in certain respects and argue that it partly requires other preventive measures than domestic violence.³⁹ Thirdly, I find that there is potential for using general human rights norms to argue for preventive measures against honour-related violence. I argue that the obligation of States to take steps to modify strict gender roles and the perception that women are inferior to men exists also outside the context of gender-specific conventions. Under CEDAW, this obligation includes the requirement to take appropriate measures to initiate debate on cultural change generally and within relevant communities.⁴⁰ I hold that this forms part of the preventive obligations also under other treaties.

When it comes to prevention of violence, it makes sense to scrutinize the right to physical and psychological integrity arising under the prohibition of torture and the right to private life as a whole, since measures taken to prevent violence falling under the right to private life can also prevent violations of the prohibition of torture. In international human rights jurisprudence and in much of the legal literature,

³⁹ This and further discussion relating to the terminology essential to the understanding of honour-related violence can be found in Ch. 1.1.

⁴⁰ Andrew Byrnes, María Herminia Graterol and Renée Chartres, *State Obligation and the Convention on the Elimination of all Forms of Discrimination against Women*, UNSW Law Research Paper No. 2007-48 (2007) 114.

violations of these two rights are still dealt with separately. As several intricate legal issues arise under these rights, I dedicate two separate articles to them.

The present PhD thesis first contextualizes honour-related violence, discusses the limitations of the research, existing literature, the contribution to the field and the terminology used. It then enters into a discussion of the central legal issues underlying the research relating to the State's obligation to prevent private acts of violence and the ability of human rights bodies to spell out in detail the preventive obligations of States. The articles forming part of this thesis have brought to the fore three aspects of the obligation to prevent that define its impact on affecting genuine change. In Chapter 2, the requirements to take effective measures, take vulnerability into account and allocate resources to prevention are analysed from this perspective. A fourth issue, the role played by the principle of due diligence, is scrutinized in my last article, to which reference is made throughout this thesis.⁴¹ A further issue instrumental to the impact of international human rights law on the prevention of honour-related violence is whether human rights bodies can steer States towards taking specific effective measures. There is a paradox in human rights bodies insisting on leaving States the choice of means in the prevention of violence and thereafter deciding whether the measures taken were sufficient. The paradox lies in that human rights bodies in practice take a stand *post facto* not only regarding whether States have made enough of an effort with the chosen measures but also if these were the right measures, generally without specifying what the alternative or additional measures required would have been.⁴² Chapter 2 therefore explores if human rights bodies could to do more to effect change by spelling out the concrete measures required in more detail.

The thesis thereafter summarizes and explains the main findings of the five research articles on which it is based. The first article establishes that honour-related violence can violate the prohibition of torture and reflects on the ensuing positive obligations to prevent it. It also discusses important underlying issues such as the definition of honour-related violence in relation to violence against women and other forms of gender-based violence and the matter of State responsibility for private acts of violence in light of international jurisprudence. It addresses questions relevant specifically to torture and ill-treatment, such as the definition of torture, focusing in particular on the public official criterion.

⁴¹ See Lisa Grans, 'The Concept of Due Diligence and the Positive Obligation to Prevent Honour-Related Violence: Beyond Deterrence', (2018) 22(5) *International Journal of Human Rights*: 733-755.

⁴² Obviously, this paradox does not apply only to preventive measures against violence, but our discussion is limited to this issue.

This thesis supports the argument that cultural considerations have to yield whenever a clear conflict with human rights norms becomes apparent.⁴³ The difficult question is which norm will prevail when two or more human rights norms clash in cases concerning honour-related violence, such as when the autonomy of persons subjected to violence clash with their right to physical integrity. Key aspects of this issue are considered in the second article, which focuses on honour-related violence not severe enough to be considered torture or other ill-treatment but contrary to the right to private life. The second article also notes the relevance of vulnerability in relation to persons subjected to or threatened by honour-related violence. In order to throw light on the practical application of the right to private life, the article applies its conclusions on the positive measures States should take to certain concrete forms of honour-related violence, including some that have not yet benefited from much legal discussion.

Honour-related violence directed at children is discussed separately from that directed at adults in the third article, with the aim of discerning whether the protection offered by international human rights law is identical for minors and adults. The article notably analyses the implications to the prevention of honour-related violence of the principle of the best interest of the child and the child's right to family life.

An interesting question is what triggers the obligation to prevent honour-related violence and, linked to this, whether there is also an obligation on States to undertake primary prevention (thus aim to forestall violence before it occurs),⁴⁴ not just respond to immediate threats of (recurring) violence. This issue is examined in the fourth article, which explores the potential of the Istanbul Convention to prevent honour-related violence. In my research for the article, I studied the preparatory materials of the Istanbul Convention, which have not previously been analysed with the view of assisting in its interpretation.

There is already ample research on the application of the due diligence standard to domestic violence, but much less on its application to honour-related violence. My final article analyses what the standard, which has been regarded as having attained the status of customary international law,⁴⁵ concretely implies in terms of general preventive measures against honour-related violence. To this end, it

⁴³ Philip Alston, 'The Best Interests Principle: Towards a Reconciliation of Culture and Human Rights' in Philip Alston (ed.), *The Best Interests of the Child: Reconciling Culture and Human Rights* (Clarendon Press, 1994) 21.

⁴⁴ This is the definition of primary prevention by Women against Violence Europe, *WAVE Report 2015 on the Role of Specialist Women Support Services in Europe* (WAVE, 2015) 65.

⁴⁵ Special Rapporteur on Violence against Women, Annual Report, The due diligence standard as a tool for the elimination of violence against women, UN Doc. E/CN.4/2006/61 (20 January 2006), para. 29.

contrasts the due diligence obligations under the right to life, the right to private life, the prohibition of torture and the prohibition of discrimination.

The final chapter of my thesis ties together the results of the research. It first brings to the front the main findings of the thesis. It succinctly summarizes the implications of applying the due diligence principle to the prevention of honour-related violence before moving on to presenting my conclusions on what States need to do in order to comply with the obligation to prevent honour-related violence that arises under the right to physical and psychological integrity. The thesis concludes with outlining the need for further research.

1.2.4. Limitations

This thesis touches upon several closely related issues, the in-depth scrutiny of which go beyond the scope of the study, including the matter of conflicting rights. Measures taken to protect the right to physical and psychological integrity can notably raise issues relating to parental rights, freedom of religion and cultural rights.

The research does not focus on the best manner of eradicating honour-related violence. It does however stress that a narrow legal approach that is not accompanied by broader (for example educational and awareness raising) initiatives is unlikely to effectively prevent honour-related violence. The emphasis of the thesis is on other than criminal law measures.

While addressing the different root causes of honour-related violence is crucial, this thesis limits itself to one key underlying factor, namely strict gender roles and perceptions that men are superior to women. It does not discuss important issues such as women's empowerment or strengthening the economic independence of women. Moreover, it does not probe the matter of gender stereotypes as such.⁴⁶

I share the view that for those who wish to retain the familiar *status quo* and who regard all traditions as intrinsically worthy, international human rights law sometimes represents an unwelcome intrusion.⁴⁷ Nonetheless, the issue of the universality of rights is not the focus of the research.

The research does also not discuss to what extent the relevant human rights norms have a horizontal effect, that is, an effect prohibiting private parties from undertaking acts that interfere with the rights and freedoms of other private parties.

⁴⁶ For such a study, see e.g. Rebecca J. Cook and Simone Cusack, *Gender Stereotyping, Transnational Legal Perspectives* (University of Pennsylvania Press, 2010).

⁴⁷ Geraldine van Bueren, 'The international protection of family members' rights as the 21st century approaches,' (1995) 17(4) *Human Rights Quarterly*: 732-765, 739.

1.2.5. Literature overview and contribution to the field

There does not exist a vast amount of legal literature on honour-related violence studying the phenomenon from the point of view of international human rights law, but there are some important works. I have been particularly inspired by Welchman and Hossein⁴⁸ and, outside the legal field, Begikhani, Gill and Hague.⁴⁹ However, none of them focuses on analysing the legal obligation to prevent such violence.

Influential legal writing on gender-based violence include (among many others) Cook,⁵⁰ who early on asserted that States are under a legal obligation to prevent such violence, and the important analysis of the principle of due diligence from the perspective of violence against women in Benninger-Budel.⁵¹ Edwards has made another significant contribution to the legal discussion of prevention of violence against women and the possible need for a separate convention on the issue.⁵² There are numerous useful legal analyses of the protection against violence offered by specific conventions that are of relevance to the subject of prevention of honour-related violence, including McQuigg and Brems and Gerards.⁵³

In relation to violence against children in the home, there is a considerable amount of literature. For example Alston, Bitensky and van Bueren have provided analyses of important aspects of the protection of children against violence, having shed light on the best interests of the child and corporal punishment of children and comparing ill-treatment of children to torture.⁵⁴

⁴⁸ Welchman and Hossein (2005).

⁴⁹ Begikhani, Gill and Hague (2016).

⁵⁰ Rebecca J. Cook (ed.), *Human Rights of Women: National and International Perspectives* (University of Pennsylvania Press, 1994).

⁵¹ Benninger-Budel (2008).

⁵² Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge University Press, 2011). A recent contribution to this discussion, providing alternative solutions to a separate convention, is Ronagh J.A. McQuigg, 'Is it time for a UN treaty on violence against women?', (2018) 22(3) *International Journal of Human Rights*: 305-324.

⁵³ Ronagh J.A. McQuigg, *The Istanbul Convention, Domestic Violence and Human Rights* (Routledge, 2017); Eva Brems and Janneke Gerards (eds.), *Shaping Rights in the ECHR – The Role of the European Court of Human Rights in Determining the Scope of Human Rights* (Cambridge University Press, 2013).

⁵⁴ Alston (1994); Susan H. Bitensky, *Corporal Punishment of Children: A Human Rights Violation* (Transnational Publishers, 2006); Geraldine van Bueren (ed.), *Childhood Abused: Protecting Children against Torture, Cruel, Inhuman and Degrading Treatment and Punishment* (Dartmouth Publishers, 1998).

There is a plethora of literature on the topic of torture,⁵⁵ but only a few authors have focused on prevention of torture. Among those who have, I have notably found Renzulli's work relevant to my research.⁵⁶ Meanwhile, there is only limited literature available on the issue of the right to physical and psychological integrity falling specifically under the right to private life (that is, less severe forms of violence),⁵⁷ which made my second article on utilising the right to private life to protect against honour-related violence seem all the more pertinent.

The vulnerability of persons subjected to or risking honour-related violence is a recurring factor that is taken into consideration in assessing State obligations in the five articles that this thesis is based on. Fineman's and Grear's analysis of vulnerability has been instrumental in shifting the general thinking away from considering vulnerability as a set characteristic inherent to specific groups, such as women.⁵⁸ Also Ippolito and Sánchez have contributed to the development of the concept in particular in relation to the ECHR.⁵⁹ Nifosi-Sutton has provided an extensive overview of international human rights law provisions applicable to vulnerable groups and analysed the reference to vulnerability made by human rights bodies, but she has not focused on the consequences of finding a particular individual to be in a vulnerable situation.⁶⁰ These consequences have been discussed by others, such as Timmer.⁶¹

Based on the above, very brief, summary of existing relevant literature, one can conclude that there are some gaps in the research on issues relevant to the prevention of honour-related violence. While violence against women in general has been the subject of intensive research, the obligations of the State to prevent other forms of violence within the family have gained less attention. This research aims to

⁵⁵ This includes an interesting book by Dewulf, where he seeks to redefine torture. See Steven Dewulf, *The Signature of Evil - (Re)Defining Torture in International Law* (Intersentia, 2011).

⁵⁶ Isobel Renzulli, 'A critical reflection on the conceptual and legal foundations of the duty to prevent torture', (2016) 20(8) *International Journal of Human Rights*: 1244-1263.

⁵⁷ Mainly van Bueren (1995), Andrew Clapham, *Human Rights in the Private Sphere* (Clarendon Press, 1993), Jill Marshall, *Personal Freedom through Human Rights Law? Autonomy, Identity and Integrity under the European Convention on Human Rights* (Martinus Nijhoff Publishers, 2009) as well as shorter sections on the right to private life in various commentaries on specific international human rights instruments, such as Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Engel Verlag, 2005).

⁵⁸ Martha Albertson Fineman and Anna Grear (eds.), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate, 2013).

⁵⁹ Francesca Ippolito and Sara Iglesias Sánchez (eds.), *Protecting Vulnerable Groups: The European Framework* (Bloomsbury, 2015)

⁶⁰ Ingrid Nifosi-Sutton, *The Protection of Vulnerable Groups under International Human Rights Law* (Routledge, 2017).

⁶¹ E.g. Alexandra Timmer, 'A Quiet Revolution: Vulnerability in the European Court of Human Rights' in Fineman and Grear (2013).

address that gap in relation to honour-related violence. The thesis introduces a novel perspective on honour-related violence in scrutinizing also honour-related violence directed at children. Until now, most legal research on the topic has concerned adults. Drawing a parallel to domestic violence against women and corporal punishment of children in the home, the research finds that honour-related violence can be held to constitute a violation of the right to physical and psychological integrity and analyses what measures the State is under an obligation to take to try to prevent such violations. Clearly, the human rights framework has not been sufficiently effective in significantly reducing gender-based violence in general or honour-related violence in particular. Rather than suggesting the adoption of any separate norms on the issue, this thesis explores the untapped potential of international human rights law in the fight against these widespread human rights violations.

The contribution of this thesis to the field of legal research is two-fold. It demonstrates that States are required by international human rights instruments guaranteeing the right to physical and psychological integrity to take effective measures to prevent honour-related violence both in concrete cases at hand and on a general level. Furthermore, it concludes that this obligation can be further concretized through the application of the principle of due diligence. Desiring to link the research to policy-making, I do not only discuss preventive obligations from a theoretical and abstract perspective, but also point towards what concrete measures a duly diligent State should take in order to prevent honour-related violence.

1.2.6. Terminology

The term violence is used in this research primarily to denote acts of physical and psychological violence. However, also acts such as deprivation of liberty and denial of access to money can be used as means of inflicting punishment in the name of honour.⁶²

The concept of physical and psychological integrity is understood as notably including the right to protection of bodily integrity and mental health.⁶³ These rights

⁶² The forms of honour-related violence contemplated in this research are mentioned in Ch. 1.2.3.

⁶³ The European Court of Human Rights (ECtHR) has included these and several other aspects in the right to physical and psychological integrity as protected under Arts. 3 and 8 of the ECHR. See e.g. *Opuz v. Turkey*, 9 June 2009 (Chamber), Appl. No. 33401/02, para. 161; *Valiulienė v. Lithuania*, 26 March 2013 (Chamber), Appl. No. 33234/07, para. 69.

fall within the right to private life and the prohibition of torture and other ill-treatment laid down in various international human rights conventions.⁶⁴

By most definitions, violence against women includes domestic violence, that is, violence within the family or domestic unit or between former or current partners.⁶⁵ Depending on whether the text refers to violence also in a public setting or solely to violence within the family, I will use the terms violence against women (encompassing also domestic violence) or domestic violence.

This research refers to the impact of the (real or perceived) pressure from the community in the perpetration of honour-related violence. With community, I mean the community with which the family identifies, based on ethnic, cultural, religious or similar grounds.⁶⁶

The present thesis refers to private acts of violence to distinguish acts of violence that are perpetrated by other than agents of the State, notably family members. 'Family' is here understood in a wide sense, including also other than core family members such as spouses, parents, children and siblings.

There is a certain ambiguity as to the content of the obligation to prevent. Under international human rights law, States are held to assume obligations to respect, protect and fulfil human rights. The obligation to respect is essentially a negative obligation, that is, a State obligation not to interfere with a right. Since my research focuses on violence by private individuals, the obligation to respect is not very central to this thesis. Meanwhile, the obligation to prevent private acts of violence can be seen as both an obligation to protect and an obligation to fulfil. The obligation to protect requires States to protect individuals against human rights violations by other individuals. In the context of my research, this notably entails undertaking individual preventive measures. The obligation to fulfil requires States to create the conditions under which individuals can enjoy human rights. In this research context, the obligation to fulfil entails undertaking general preventive measures.

When it comes to violence committed by private individuals, States are expected to hinder violence from happening in first place (prevention) and protect individuals against the effects of violence (protection). While in theory it is clear that the obligation to prevent is complementary to the obligation to protect, this is not always apparent in international case law, where the line between protection and prevention is blurred. The positive obligation, which this thesis is concerned with, is that of prevention of violence. As a human rights law term, prevention has largely been linked to the reaction of authorities to immediate threats to life and health,

⁶⁴ See Ch. 2.1.1.

⁶⁵ Art. 3(b) of the Istanbul Convention.

⁶⁶ Lisa Grans, 'Honour-Related Violence and Children's Right to Physical and Psychological Integrity', (2017) 35(2) *Nordic Journal of Human Rights*: 146-161, 148.

(generally) as evidenced by previous acts of violence. Renzulli notes in the context of torture that the duty to prevent tends to be filtered through the obligation to protect, whereby the duty is seen as arising in reaction to imminent or actual risks rather than in situations generally associated with risk of ill-treatment. She concludes that the effect is that measures therefore remain reactive rather than pre-emptive. I agree, and find that the approach needs to change. This research demonstrates that prevention requires more than reacting to violence that has already taken place. For example, an obligation to take general preventive measures arises under the obligation to fulfil the prohibition of torture and ill-treatment. However, this obligation has been confused with the obligation to prohibit torture, focusing on criminalisation and eliminating impunity.⁶⁷

The present research refers to minimum measures to denote both fundamental measures to prevent honour-related violence such as adoption and implementation of key legislation and maintenance of an institutional set-up sufficient to protect against honour-related violence and other individual and general measures that can prevent such violence, as further elaborated in Chapter 4.2. I link the concept of minimum measures to the principle of due diligence and the requirement for effective measures.

The research refers to the terms primary prevention, secondary prevention and tertiary prevention. Primary prevention aims to forestall violence before it occurs, secondary prevention aims to detect violence in time or to terminate it at the earliest possible point and tertiary prevention aims to prevent a renewed outbreak of violence or to soften its impact.⁶⁸ The term prevention is used in this research to entail measures that encompass but are not limited to primary prevention.⁶⁹ Certain of the issues dealt with can equally be termed protection.

⁶⁷ Renzulli (2016) 1246-1247.

⁶⁸ Women against Violence Europe (2015) 65.

⁶⁹ The main forms of primary prevention on the general level are summarized in the UN Secretary General's *In-depth study on all forms of violence against women*. These notably include advocacy and campaigns; education and capacity building; community mobilization; working with men; using the news media and information technology and promoting public safety. See UN Doc. A/61/122/Add.1 (6 July 2006), paras. 339-354. These primary prevention measures are additional to measures such as the adoption and effective implementation of legislation and strengthened inter-agency cooperation. See e.g. Rashida Manjoo, 'The Continuum of Violence against Women and the Challenges of Effective Address', (2012) 1 *International Human Rights Law Review*: 1-29, 18.

2. The legal framework

There are two alternative routes to attribute responsibility for private acts of gender-based violence to a State. One can argue that the State has failed to provide protection from private actors. It can also be argued that the State is responsible for failing to fulfil its obligation to prevent and punish violence against women in a non-discriminatory fashion, effectively denying women the equal protection of the law.⁷⁰ I have chosen the first avenue.

This thesis argues that in order to fulfil their obligation to effectively prevent honour-related violence,⁷¹ States would need clearer legal guidance on the preventive measures that they are required to take. This Chapter first provides a summary of applicable legal norms and the argument that States are required to take effective measures to prevent private acts of violence. It then discusses whether international human rights bodies would be able to provide clearer legal guidance on the application of the right to physical and psychological integrity from the perspective of prevention. Notably States that have ratified the ECHR have criticized its dynamic interpretation and the ECtHR's perceived lack of deference to national decision-making.⁷² What I suggest in this research is not an expansion of State obligations but a clarification of these, which necessitates the probing of the borders of the State's positive obligations.

2.1. State responsibility for (non)prevention of private acts of gender-based violence under international human rights law

The question of State responsibility for private acts of violence is still a developing issue, in particular as regards the prevention of such acts.⁷³ Until rather recently, honour-related violence and other forms of gender-based violence were not considered as issues involving any positive obligations for the State, even less so any preventive obligations. Only in the 1990s did gender-based violence against women emerge as an international law issue. Initially, the legal basis for submitting gender-

⁷⁰ Celina Romany, 'State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law' in Rebecca Cook (1994) 99.

⁷¹ The obligation to prevent rights effectively is discussed in Ch. 2.1.3.

⁷² See e.g. Luzius Wildhaber and Steven Greer, 'Reflections of a Former President of the European Court of Human Rights', (2010) 2 *European Human Rights Law Review*: 165–175.

⁷³ Grans (2015) 701.

based violence to international scrutiny was the prohibition of discrimination.⁷⁴ In the early days of advocacy against violence against women, the view was advanced that private acts of violence incurred State responsibility only if there was a lack of prosecution for discriminatory reasons.⁷⁵ This is no longer the approach. However, violence by family members that takes place in the home is still often perceived as understandable, to the extent that behaviour that would be regarded as violent, threatening or dangerous in any other location is ‘domesticated’ when taking place in the domestic setting.⁷⁶

In order to provide a background to the ensuing analysis of the obligation to prevent honour-related violence, this Chapter summarizes the applicable legal framework. It addresses three overarching legal questions, which play an important role in the reasoning in this thesis. These are the requirements to take effective measures to prevent private acts of violence, take the possible vulnerability of victims of violence into consideration and allocate resources to the prevention of gender-based violence.

2.1.1. Relevant human rights provisions

Several international human rights instruments have been interpreted as containing a legal obligation on States to prevent private acts of violence, including gender-based violence. These notably include the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CEDAW, the CRC, the ECHR, the African Charter on Human and Peoples’ Rights, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa and the ACHR.⁷⁷ The

⁷⁴ This argument advanced by the CEDAW Committee has been examined e.g. by Edwards (2011) 140-197.

⁷⁵ See e.g. Michele E. Beasley and Dorothy Q. Thomas, ‘Domestic Violence as a Human Rights Issue’ in Martha Fineman Albertson and Roxanne Mykitiuk (eds.), *The Public Nature of Private Violence: The Discovery of Domestic Abuse* (Routledge, 1994) 327.

⁷⁶ Minna Lahti, *Domesticated violence: The power of the ordinary in everyday Finland* (Helsinki University Press, 2001) 11.

⁷⁷ International Covenant on Civil and Political Rights (ICCPR), 1966, 999 UNTS 171; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, 1465 UNTS 85; African Charter on Human and Peoples’ Rights, 1981, 1520 UNTS 217. Such an obligation has been read into Art. 2 (read in conjunction with Arts. 7 and 9) of the ICCPR; Art. 1 of CAT (as interpreted by CAT Committee General Comment No. 2, UN Doc. CAT/C/GC/2 (2008)); Art. 2(e) of CEDAW (as interpreted by CEDAW Committee General Comment No. 19); Art. 19 of the CRC; Art. 1 (read in conjunction with Arts. 2, 3 and 8) of the ECHR; Art. 4(2)(c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol), 2003, OAU Doc.

Belém do Pará Convention and the Istanbul Convention explicitly include private acts of violence against women. Also the Convention on the Rights of Persons with Disabilities can be interpreted to entail an obligation to prevent private acts of violence.⁷⁸

Honour-related violence may, depending on the circumstances, notably violate the rights to life, liberty and bodily integrity, the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, the prohibition of slavery, the right to privacy, the right to marry and found a family and the duty of States to modify customs that discriminate against women or lead to violence against children.⁷⁹ This research pays particular attention to preventive obligations arising under the right to private life and the prohibition of torture and other ill-treatment. These rights are included in Articles 7 and 9 of the ICCPR, Article 19 of the CRC, Article 1 of CAT, Articles 3 and 8 of the ECHR, Articles 4, 5 and 6 of the African Charter of Human and Peoples' Rights, Article 4 of the Maputo Protocol, Article 16 of the African Charter on the Rights and Welfare of the Child⁸⁰ and Articles 5 and 7 of the ACHR. These rights also permeate the entire Istanbul Convention, although they are not specifically mentioned there, and the Belém do Pará Convention, which links violence against women and the right to physical and psychological integrity.⁸¹ Furthermore, as noted above, an obligation to prevent violence against women has been read into Article 2(e) of CEDAW.

The UN Special Rapporteur on Violence against Women holds that on the basis of international jurisprudence and *opinio juris* one can conclude that there is also a rule of customary international law that obliges States to prevent and respond to acts of violence against women committed by non-State actors with due diligence.⁸² The statement can arguably be applied to all forms of gender-based violence, including honour-related violence.

There have been developments in linking private acts of violence in the home to failures by the State to prevent such acts notably in the areas of women's rights and children's rights. In relation to children, the argument that corporal punishment in

CAB/LEG/66.6/ Rev 1; Art. 1 of the ACPHR (read in conjunction with Arts. 4, 5 and 6, see e.g. 74/92, *Commission nationale des droits de l'Homme et des libertés c. Tchad*, 18th Ordinary Session of the ACPHR, October 1995, paras. 35 and 37) and Art. 1(1) of the ACHR (read in conjunction with Arts. 4, 5 and 7).

⁷⁸ Convention on the Rights of Persons with Disabilities (CRPD), 2006, 2515 UNTS 3. See Arts. 10, 14 and 15 of the CRPD and CRPD Committee General Comment No. 3 on women and girls with disabilities, UN Doc. CRPD/C/GC/3 (2016), paras. 26 and 27.

⁷⁹ Radhika Coomaraswamy, 'Violence against women and 'crimes of honour'' in Welchman and Hossain (2005) xii.

⁸⁰ African Charter on the Rights and Welfare of the Child, 1990, OAU Doc. CAB/LEG/24.9/49.

⁸¹ See Arts. 4(b), (c) and (d) of the Belém do Pará Convention.

⁸² Special Rapporteur on Violence against Women, Annual Report (2006), paras. 29-30.

the home can incur State responsibility under the prohibition of torture and other ill-treatment is increasingly accepted by special procedures,⁸³ treaty bodies⁸⁴, State practice⁸⁵ and legal authors⁸⁶ alike.⁸⁷ The argument is supported by Article 19 of the CRC,⁸⁸ which extends the obligation of States to protect children into the private sphere. In relation to gender-based violence against women, a similar development has taken place. The articles forming part of this thesis exemplify the jurisprudence of international human rights bodies demonstrating the acceptance of State responsibility for gender-based violence against women when the State has been aware of the risk of violence but failed in its positive obligation to take appropriate preventive measures. This development has been achieved by interpreting positive obligations in international human rights law as entailing a duty on the State to act with due diligence to protect individuals against human rights violations also when the violations are committed by private persons.⁸⁹ I will refer to the principle of due diligence throughout my research.⁹⁰

2.1.2. Relevance of the vulnerability of persons risking honour-related violence

This research argues that when the (potential) victim of honour-related violence is a person in a vulnerable position, this affects the level of due diligence that must be

⁸³ Special Rapporteur on Torture, Annual Report, UN Doc. A/HRC/7/3 (15 January 2008), para. 40, referring to e.g. the Special Rapporteur on Torture, the Human Rights Committee (HRC) and the CAT Committee.

⁸⁴ CRC General Comment No. 8 requires States to remove any legislation permitting violence against children in their homes or families. See CRC General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, UN Doc. CRC/C/GC/8 (2006), para. 31. See also e.g. *Seven individuals v. Sweden*, 13 May 1982 (Commission Decision), Appl. No. 8811/79; *Tyrer v. the United Kingdom*, 25 April 1978 (Chamber), Appl. No. 5856/72 and *A v. United Kingdom*, 23 September 1998 (Chamber), Appl. No. 25599/94.

⁸⁵ By 9 March 2018, 53 States had prohibited all corporal punishment of children, including in the home. See Global Initiative to End All Corporal Punishment of Children at www.endcorporalpunishment.org.

⁸⁶ E.g. Bitensky (2006).

⁸⁷ Grans (2015) 704. Honour-related violence against children is examined in Grans (2017).

⁸⁸ (1989) 1577 UNTS 3.

⁸⁹ Joanna Bourke-Martignoni, 'The History and Development of the Due Diligence Standard in International Law and Its Role in the Protection of Women against Violence' in Benninger-Budel (2008) 52.

⁹⁰ For an overview of the relevance of the principle of due diligence to the prevention of honour-related violence, see Ch. 3.5 and Grans (2018 B).

shown.⁹¹ Indeed, I argue that persons subjected to or threatened by honour-related violence are often in a vulnerable position physically and psychologically.⁹² Meanwhile, children generally are held to be vulnerable per se,⁹³ and this is accentuated when subjected to honour-related violence. In defining a person as vulnerable, the ECtHR has taken into account past violence, threats and fear of further violence and social background. Social background can here be interpreted as referring to community attitudes tolerant of violence against women and/or a pattern of violence against women remaining unpunished.⁹⁴

Vulnerability can be said to mean actual or potential exposure to physical or emotional harm.⁹⁵ Fineman has demonstrated how this is a universal condition that we are all susceptible to during different times in our lives.⁹⁶ Vulnerable groups can correspondingly be understood to mean persons who are likely to experience unequal enjoyment of rights or denial of rights to a greater extent than others.⁹⁷ Peroni and Timmer point out the importance of focusing on the circumstances that *render* certain groups vulnerable, not on which groups *are* vulnerable. This enables a better understanding of the often complex factors that affect vulnerability and the ability to repel harm.⁹⁸

The concept of vulnerability is referred to notably by the ECtHR,⁹⁹ the UN human rights bodies and the Inter-American human rights bodies.¹⁰⁰ The legal consequences of vulnerability are the subject of increasing debate. Timmer points out that it will depend on the circumstances of the case and the type of vulnerability

⁹¹ See e.g. Inter-American Commission on Human Rights (IACCommHR), *Lenahan Gonzalez et al. v. the United States*, Report No. 80/11, Case No. 12.626, para. 129 and ECtHR, *Đorđević v. Croatia*, 24 July 2012 (Chamber), Appl. No. 41526/10, para. 138. In *González et al. v. Mexico* ('Cotton Field' case), 16 November 2009, Series C No. 205, para. 408, the Inter-American Court of Human Rights (IACtHR) indicated that the special protection children are entitled to demands a stricter level of due diligence.

⁹² For the reasoning behind this conclusion, see Grans (2016) 183-184.

⁹³ Grans (2017) 155-156.

⁹⁴ See *Opuz v. Turkey*, paras. 99, 100 and 160.

⁹⁵ Nifosi-Sutton (2017) 4.

⁹⁶ Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition', (2008) 20(1) *Yale Journal of Law & Feminism*: 1-23, 1; 12-13.

⁹⁷ Nifosi-Sutton (2017) 270.

⁹⁸ Lourdes Peroni and Alexandra Timmer, 'Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law', (2013) 11 *International Journal of Constitutional Law*: 1056-1085, 1073-1074.

⁹⁹ Besson notes that the ECtHR has referred to vulnerability in relation to a large number of rights, but most often in relation to Arts. 3 and 8. Samantha Besson, 'La vulnérabilité et la structure des droits de l'homme – l'exemple de la jurisprudence de la Cour européenne des droits de l'homme' in Laurence Burgorgue-Larsen (ed.), *La vulnérabilité saisie par les juges en Europe* (Editions Pedone, 2014) 66.

¹⁰⁰ Nesa Zimmermann, 'Legislating for the Vulnerable? Special Duties under the European Convention on Human Rights', (2015) 4 *Revue suisse de droit international et européen*: 539-562, 541.

in question how much weight should be given to the vulnerability factor over other considerations.¹⁰¹ I conclude that the vulnerability of the victims or potential victims of honour-related violence has two notable consequences for the preventive obligations of the State. Vulnerability not only lowers the threshold for intervention in individual cases,¹⁰² but also raises the level of due diligence that must be shown in preventing violence on the individual and general level by requiring States to take into account the particular needs of vulnerable persons.¹⁰³ This indirectly limits the margin of appreciation of the State. Timmer calls this deepening of positive obligations. She finds that this can also take the form of turning an obligation of conduct into an obligation of result.¹⁰⁴ Others refer to this as special positive obligations.¹⁰⁵ For example, the CEDAW Committee has noted that vulnerability entails special obligations requiring the adoption of measures designed to suit the needs of the persons in question.¹⁰⁶ My analysis of due diligence indicates that this limiting of the choices of the State could equally be termed stricter due diligence obligations.¹⁰⁷

The case law of the ECtHR may be interpreted to imply that when the victim is a vulnerable individual, the scope of the positive obligation to take reasonable steps to protect her or him from harm caused by private individuals is broader.¹⁰⁸ In the Inter-American system, this is the case when the State has the position as a 'guarantor' of rights, as it does in relation to groups such as women and children.¹⁰⁹

¹⁰¹ Timmer (2013) 165.

¹⁰² In Lisa Grans, 'The Istanbul Convention and the Positive Obligation to Prevent Violence', (2018) 18(1) *Human Rights Law Review*: 133-155, 142, I argue that vulnerability lowers the level of severity for treatment to fall within the prohibition of torture and other ill-treatment and the right to private life. Similarly, in relation to Art. 3 of the ECHR, e.g. Ulrike Brandl and Philip Czech, 'General and Specific Vulnerability of Protection-Seekers in the EU: Is there an Adequate Response to their Needs?' in Ippolito and Sánchez (2015) 253.

¹⁰³ Compare Laurens Lavrysen, *Human Rights in a Positive State: Rethinking the Relationship Between Positive and Negative Obligations under the European Convention on Human Rights* (Intersentia, 2016) 110. This could e.g. entail taking the initiative to offer preventive and protective measures to persons in a vulnerable position even if they do not demand such measures due to fear or lack of knowledge of such measures.

¹⁰⁴ Timmer (2013) 166.

¹⁰⁵ E.g. Besson (2014) 66.

¹⁰⁶ Nifosi-Sutton (2017) 96, referring to CEDAW General Recommendation No. 28: Core obligations, UN Doc. CEDAW/C/GC/28 (2010), para 21. However, Nifosi-Sutton finds that of the treaty bodies, only the ESCR Committee and the CRC Committee have relied systematically on the concept of vulnerability. See *ibid.*, 113 (HRC); 149 (ESCR Committee); 164 (CRC Committee).

¹⁰⁷ See Ch. 3.5 *infra*.

¹⁰⁸ See e.g. *Z and Others v. the United Kingdom*, 10 May 2001 (Grand Chamber), Appl. No. 29392/95, para. 73 and *A. v. the United Kingdom*, 23 September 1998 (Chamber), Appl. No. 25599/94, para. 22.

¹⁰⁹ *Gómez-Paquiyaury Brothers v. Peru*, 8 July 2004, Series C No. 110, para. 124; 'Cotton Field' case, para. 495.

Interestingly, Nifosi-Sutton's study seems to indicate that at least CERD and some of the thematic special procedures are of the view that States should reduce vulnerability of certain groups as such, by taking specific measures.¹¹⁰

Where the victim of honour-related violence is in a vulnerable position, the State will thus have to engage in situations in which it would otherwise not have to interfere. It may also need to undertake measures additional to those it would otherwise have resorted to in cases of private acts of violence. Notably, there is a clear link between vulnerability and the requirement for effective measures. Both the ECtHR and the Inter-American human rights bodies have required effective prevention of harm in particular of persons and groups in a vulnerable position.¹¹¹ In order to be effective, preventive measures need to take into account the vulnerability of the victim. For example, if potential victims of honour-related violence in practice are not able to report threats to the police in person at the police station due to the risks associated with such a visit, other methods of reporting threats need to be developed. We will now turn to the issue of effective measures.

2.1.3. The requirement for effective preventive measures

Article 26 of the Vienna Convention on the Law of Treaties lays down that States are obliged to apply ratified international treaties in good faith.¹¹² This follows from the principle of *pacta sunt servanda*. International scrutiny of the implementation of human rights treaties is however not based on a demand that the State chooses the very best alternative means of implementation, only measures that are 'reasonable and suited to achieving the legitimate aim being pursued'.¹¹³ To put it differently, the measures States take must be effective. This also applies to the important obligation on States to try to change attitudes underpinning gender-based violence, including honour-related violence, the obligation on which this research largely centres. In the words of the UN Secretary General:

¹¹⁰ Nifosi-Sutton (2017) 111; 113. Further examination of the possible legal basis for this argument falls outside the scope of this research.

¹¹¹ *X and Y v. the Netherlands*, 26 March 1985 (Chamber), Appl. No. 8978/80, paras. 23, 24 and 27; *Bevacqua and S. v. Bulgaria*, 12 June 2008 (Chamber), Appl. No. 71127/01, para. 64; IACtHR Advisory Opinion OC-17/2002, Juridical Condition and Human Rights of the Child, 28 August 2002, para. 91.

¹¹² Vienna Convention on the Law of Treaties, 1969, 1155 UNTS 331.

¹¹³ This was the formulation of the ECtHR in *James and Others v. the United Kingdom*, 21 February 1986 (Plenary), Appl. No. 8793/79, para. 51. The issue of the discretion this formulation leaves to national authorities is discussed e.g. in Jonas Christoffersen, *Fair Balance: Proportionality, Subsidiarity and Primarity in the European Convention on Human Rights* (Martinus Nijhoff Publishers, 2009) 268ff.

“To meet their human rights obligations, States must take up the challenge of transforming the social and cultural norms regulating the relations of power between men and women and other linked systems of subordination. States have a responsibility to act as a catalyst for social change and cannot defer this responsibility to civil society groups. Historically, States have shaped cultural and social norms through laws and policies that incorporated existing gender relations of power or modified them to respond to State-centred goals, such as expanding the participation of women in the labour force. The question, therefore, is not whether States can and should play a role in transforming discriminatory social and cultural norms, but how they can do so most effectively.”¹¹⁴

Key human rights bodies have adopted the concept of effective rights. The IACtHR has stated that ‘the inherent purpose of all treaties is to be effective’.¹¹⁵ The notion of effectiveness also ‘runs like a thread’ through ECtHR jurisprudence and provides the theoretical basis for the interpretation of the positive obligations inherent in the ECHR.¹¹⁶ This forms part of the reasoning that positive obligations are inherent in the effective respect of specific human rights provisions in order to ensure that rights are enjoyed in practice. There is substantial human rights jurisprudence demonstrating that rights must be ‘practical and effective’, or just ‘effective’.¹¹⁷ The ECtHR has interpreted this as meaning that States must render acts of private individuals that violate the ECHR unlawful, but in the case of vulnerable individuals, the obligation of the State goes beyond providing effective remedies and extends to protecting these individuals from private acts of violence.¹¹⁸ The particular care States must demonstrate in providing protection of persons in a vulnerable position has been described in Chapter 2.1.2.

This research argues that the requirement for effectiveness has practical consequences for the choice of preventive measures against honour-related

¹¹⁴ In-depth study on all forms of violence against women, para. 101.

¹¹⁵ ‘*Cotton field*’ case, para. 65. See also the reference to ‘lack of effective action by the State’ e.g. in IACommHR, *Maria Da Penha Maia Fernandes v. Brazil*, 16 April 2001, Report No. 54/01, Case No. 12.051, para. 56.

¹¹⁶ Keir Starmer, ‘Positive Obligations under the Convention’ in Jeffrey Jowell and Jonathan Cooper (eds.), *Understanding Human Rights Principles* (Hart, 2001) 146.

¹¹⁷ See notably the ECtHR e.g. in *Airey v. Ireland*, 9 October 1979 (Chamber), Appl. No. 6289/73, para. 24; *X and Y v. the Netherlands*, paras. 27, 30; *Osman v. the United Kingdom*, 28 October 1998 (Chamber), Appl. No. 23452/94, para. 115; *C.A.S. and C.S. v. Romania*, 20 March 2012 (Chamber), Appl. No. 26692/05, para. 78; *Eremia v. Moldova*, 28 May 2013 (Chamber), Appl. No. 3564/11, para. 66 (referring to ‘effective measures’) and the IACommHR in *María Eugenia Morales de Sierra v. Guatemala*, 19 January 2001, Report No. 4/00, Case No. 11.625, para. 51.

¹¹⁸ Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2006) 357.

violence. It stresses that effective prevention should centre on minimising the risk for violations to happen in the first place, that is, primary prevention, in addition to preventing repetition of violence.¹¹⁹ This demands comprehensive and long-term measures. States are required to undertake preventive measures in individual cases (targeting individuals and families) as well as general preventive measures on the societal and community level.¹²⁰ The prevention must be effective as a whole, that is, the design of strong measures must be complemented with ensuring sufficient resources and efficient cooperation between relevant authorities. Furthermore, effective prevention entails a requirement to take the particular characteristics of honour-related violence into account in prevention. Under the ECHR, States are required to take reasonably available preventive measures, which could have a real prospect of altering the outcome or mitigating the harm.¹²¹ Chapter 4.2 summarizes the preventive measures States can reasonably be expected to take specifically against honour-related violence.

Although the concept of effective rights applies to all positive obligations, I find that the requirement for effective measures is essential particularly to positive obligations subject to due diligence. I submit that the principle of due diligence essentially demands that the State uses its best efforts to take effective measures, both in individual cases and on a general level.¹²² In terms of positive obligations that are not subject to due diligence, all States that have ratified a treaty protecting the right to physical integrity must take the measures that are indispensable to prevent violence, notably (but not exclusively) certain forms of legislation and a sufficient institutional set-up.¹²³ In relation to obligations subject to the principle of due diligence, the requirement for effectiveness acts as a sieve for the choice of measures, with irrelevant or inefficient measures being eliminated and measures that could have a real prospect of altering the outcome or mitigating the harm being retained. This understanding of the requirement of effective measures is illustrated below (Picture 1).

¹¹⁹ Grans (2016) 171.

¹²⁰ Grans (2015) 699-700; Grans (2016) 188-189.

¹²¹ *E. and Others v. the United Kingdom*, 26 November 2002 (Chamber), Appl. No. 33218/96, paras. 99-100.

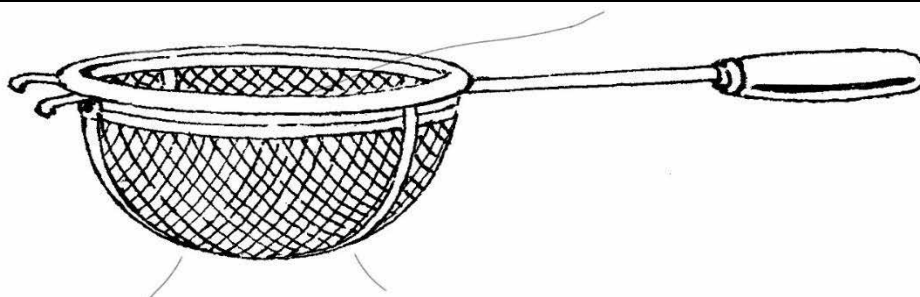
¹²² These efforts have to be particularly stringent in relation to persons in a vulnerable situation or serious violations of rights. See Grans (2018 B) 3.

¹²³ The issue of indispensable measures is further discussed in Ch. 2.2 of this thesis.

Picture 1. The requirement for effective measures

The State is obliged to undertake the preventive measures that are indispensable to prevent violence. These notably include key legislation and institutional set-up, which are required of every State. Other general or individual measures may also be indispensable to prevent violence in specific circumstances.

In situations of vulnerability or risk of severe violence, the State must also take other individual and/or general measures that could have a real prospect of altering the outcome or mitigating the harm.



The State is to discard general measures not based on statistics or research and individual or general measures not adapted to the specific form of violence in question.

2.1.4. The obligation to allocate resources to the prevention of honour-related violence

The duty to undertake effective measures can rarely be fulfilled without resource implications. While human rights bodies have traditionally been cautious in placing obligations with financial implications on States, they have made equally clear that certain measures will have to be taken. In a joint general recommendation, the CEDAW Committee and the CRC Committee note that legislation aimed at eliminating harmful practices must entail appropriate budgeting. The general recommendation stresses that the obligation to pursue targeted policies that respond effectively to specific obstacles, barriers and resistance to the elimination of discrimination that give rise to harmful practices and violence against women is an

immediate obligation, which cannot be delayed on any grounds.¹²⁴ This seems to imply that the taking of measures to change attitudes towards gender roles and use of honour-related violence cannot be postponed even in States with very little available resources or in occupied or failed States. The more common view, with which I agree, tends to be that budgetary restrictions may put limits on the State's ability and positive obligation to prevent violence in general (as States cannot be required to do the impossible), but that these factors cannot justify a failure to protect an individual in a concrete case of violence.¹²⁵ In an occupied or failed State, it would similarly be materially impossible for the State to fulfil this obligation.¹²⁶ The joint general recommendation complements the CRC Committee's general comment on budgeting, which makes recommendations that are more specific on how to realize all the rights under the Convention, especially those of children in vulnerable situations. It points out that State parties have no discretion as to whether or not to satisfy their obligation to undertake the appropriate legislative, administrative and other measures necessary to realize children's rights, including measures related to public budgets. The measures are considered appropriate when 'they are relevant to directly or indirectly advancing children's rights in a given context, including that of public budgets'. States are obliged to equip all levels and structures of the executive, legislature and judiciary with the resources and information required to advance the rights of all children in a comprehensive and sustainable manner.¹²⁷

As far as allocation of resources to the prevention of honour-related violence is concerned, the positive obligations under treaties other than the CRC and CEDAW would benefit from clarification.¹²⁸ For States having ratified the Istanbul Convention, a financial commitment is clearly required. Meyerfeld notes that failing

¹²⁴ Joint General Recommendation of the CEDAW Committee and the CRC Committee, paras. 11 and 30.

¹²⁵ See e.g. Stijn Smet, 'The 'absolute' prohibition of torture and inhuman or degrading treatment in Article 3 ECHR: Truly a question of scope only?' in Brems and Gerards (2013) 292.

¹²⁶ Compare regulation of State responsibility in situations of *force majeure* in Art. 23 in International Law Commission, *Articles on the Responsibility of States for Internationally Wrongful Acts*, (2001) II(2) *Yearbook of the International Law Commission*.

¹²⁷ CRC, General Comment No. 19 on public budgeting for the realization of children's rights (art. 4), UN Doc. CRC/C/GC/19 (2016), paras. 9, 18, 21, 22 and 27(c)(i). The CRC Committee's general comment also notes that the core human rights treaties contain provisions that are similar to Art. 4 of the CRC and that their general comments addressing public budgets should be seen as complementing that of the CRC. Examples of such general comments include CEDAW General Recommendation No. 28 on core obligations, UN Doc. CEDAW/C/GC/28, paras. 34, 38(a) and 39.

¹²⁸ Considering the almost universal ratification of the CRC and the fact that measures designed to prevent honour-related violence against children will have a preventive effect also on such violence against adults, it would be important to press for better implementation of the obligation under the CRC.

to budget for the measures required under the Istanbul Convention could violate the Convention.¹²⁹ It remains unclear whether a similar argument may be applicable in relation to other international instruments, although the case law of the ECtHR and the IACCommHR indicate that such a future development is not too far-fetched.¹³⁰ Timmer finds that in the ECtHR system, it will depend on the circumstances of the case and the kind of vulnerability at hand how far the Court will go in prioritizing the protection of vulnerable persons over economic considerations.¹³¹ It needs to be kept in mind that resourcing is not only about allocating funding to the implementation of preventive measures. Part of the discussion of resourcing concerns the need to ensure a functioning administrative process with sufficient expertise among relevant authorities to ensure that the level of risk and need for protection is properly evaluated in order to ensure effective protection.¹³²

I argue below that States must undertake certain minimum measures in order to prevent honour-related violence. Resources must arguably be allocated to these measures. The extent of the allocation is subject to due diligence, in other words, the State should put aside sufficient resources to enable effective prevention in the manner a well-administered State would.¹³³

2.2. The ability of human rights bodies to spell out in detail the preventive obligations of States

States can carry responsibility for private acts of violence when they fail to fulfil their preventive obligations under human rights treaties binding on the State. In the interest of increasing the foreseeability and consistency of the law, it would seem reasonable that States had access to guidance on what they are legally required to do to prevent acts of gender-based violence such as honour-related violence, both on

¹²⁹ Bonita C. Meyersfeld, 'Introductory Note to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence', (2012) 51 *International Legal Materials* 107. Relevant articles in this respect is the due diligence obligation in Art. 5(2) and the obligation in Art. 8 to allocate appropriate resources for the adequate implementation of the Convention.

¹³⁰ Grans (2015) 24.

¹³¹ Timmer (2013) 165.

¹³² See Dimitris Xenos, 'The human rights of the vulnerable', (2009) 13(4) *International Journal of Human Rights*: 591-614, 603.

¹³³ Compare ILA Study Group on Due Diligence in International Law, Second Report (July 2016) (Second ILA Report), 8-10.

the general level and in individual cases. Human rights bodies have until date not been very forthcoming with such guidance.¹³⁴

This research demonstrates that despite the restraint of human rights bodies in providing States with clear guidance on what preventive measures are required against gender-based violence, certain requirements can still be deduced from their jurisprudence in conjunction with soft law instruments such as general comments and authoritative interpretations of international human rights instruments by special rapporteurs. This chapter will first explore the main causes of that restraint, namely the interrelated doctrines of subsidiarity, deference and the margin of appreciation, in order to clarify whether international human rights bodies could or should take a clearer stance on required preventive measures.¹³⁵

Legal research and comments by human rights bodies on their mandate to interpret in detail how national authorities should have acted in a specific case overwhelmingly focus on other than preventive obligations. In particular, there is a lack of legal discussion as to the mandate of human rights bodies to list preventive measures on a structural or societal level. This is linked to the premise that the scrutiny is limited to the consideration of the case at hand. While according to Article 46(1) of the ECHR, the judgments of the ECtHR are binding only on the respondent State, in practice, they are often considered as having an effect also on third States.¹³⁶ The Brighton Declaration indeed calls upon States to take account not only of the Convention but also the case law of the ECtHR, including by adopting effective preventive measures.¹³⁷ Cremer asks himself whether prescriptive orders by the ECtHR would perhaps fall outside the issues on which the Court is called upon to decide and therefore, falling outside the Court's powers, not have the

¹³⁴ Obviously, there is a need for legal clarity not only in relation to prevention of gender-based violence but more generally. Gender-based violence is however such a pervasive human rights problem that it there would seem to exist a particularly strong interest in establishing more clearly the key measures that States must take to fight it.

¹³⁵ Christoffersen finds that in essence, these three doctrines as well as the fourth instance principle are substantially the same, although they are applied in separate areas of case law. See Christoffersen (2009) 240. Legg points out that it might be premature to talk about a doctrine on the margin of appreciation in the case of other human rights bodies than the ECtHR, although both IACtHR and the HRC apply similar reasoning. See Andrew Legg, *The Margin of Appreciation in International Human Rights Law: Deference and Proportionality* (Oxford University Press, 2012) 14.

¹³⁶ Villiger has described how the Court has increasingly given advice in its judgments as to how these could and should be implemented. See Mark E. Villiger, 'Binding Effect and Declaratory Nature of the Judgments of the European Court of Human Rights: An Overview' in Anja Seibert-Fohr and Mark E. Villiger (eds.), *Judgments of the European Court of Human Rights – Effects and Implementation* (Nomos, 2014).

¹³⁷ High Level Conference on the Future of the European Court of Human Rights, Brighton Declaration (20 April 2012), para. 7.

binding force of a judgment.¹³⁸ He, somewhat hesitantly, answers the question in the negative. So do I.

The doctrine of deference still plays an important role in the stance of international human rights bodies. The doctrine has been developed mainly in relation to scrutiny of facts and evidence in individual cases. Systemic conditions (such as systematic impunity for certain crimes) can however affect whether a human rights body is willing to defer to national courts or not.¹³⁹ Engström notes that deference serves to strike a balance between law and public policies and a court's decision on whether or not to defer to domestic policy choices is a result of multiple considerations, such as the appropriate role of the court, the capacity of the court and the substance of the dispute.¹⁴⁰ He concludes that the exact degree of deference is always established on a case-by-case basis and that, in determining the degree of deference, criteria such as reasonableness, proportionality, arbitrariness and necessity are used, all of which are inherently vague.¹⁴¹ Some issues seem to elicit a higher degree of deference by their very nature, such as national security concerns or matters of resource allocation.¹⁴² The issue of cultural deference is perhaps particularly contested and has been widely debated elsewhere.¹⁴³

International human rights bodies also often refer to the closely related margin of appreciation principle.¹⁴⁴ A fundamental question is if the margin of appreciation

¹³⁸ Hans-Joachim Cremer, 'Prescriptive Orders in the Operative Provisions of Judgments of the European Court of Human Rights: Beyond *res judicanda*?' in Seibert-Fohr and Villiger (2014) 39. Cremer does not define prescriptive orders, but these can be inferred to mean strongly worded and legally binding specifications of the required State action.

¹³⁹ In relation to the Inter-American human rights system, see Bernhard Duhaime, 'Subsidiarity in the Americas: What Room Is There for Deference in the Inter-American System?' in Lukasz Gruszczynski and Wouter Werner (eds.), *Deference in International Courts and Tribunals: Standard of Review and Margin of Appreciation* (Oxford University Press, 2014) 295-296.

¹⁴⁰ Viljam Engström, 'Deference and the Human Rights Committee', (2016) 34(2) *Nordic Journal of Human Rights*: 73-88, 74-75.

¹⁴¹ *Ibid.*, 82.

¹⁴² *Ibid.*, 75.

¹⁴³ E.g. Alison Dundes Renteln, 'Corporal Punishment and the Cultural Defense', (2010) 73 *Law and Contemporary Problems*: 253-279; Marie-Claire Foblets, Jean François Gaudreault-Desbiens and Alison Dundes Renteln (eds.), *Cultural Diversity and the Law, State Responses for Around the World, Proceedings of the Colloquium 'The Response of State Law to the Expression of Cultural Diversity'* (Brussels, September 2006); Florian Hoffmann and Julie Ringelheim, 'Par-delà l'universalisme et le relativisme : la Cour européenne des droits de l'homme et les dilemmes de la diversité culturelle', (2004) 52 *Revue Interdisciplinaire d'Etudes Juridiques*: 109-142; Phillips (2003).

¹⁴⁴ For further discussion of this principle, see e.g. Cordula Dröge, *Positive Verpflichtungen der Staaten in der Europäischen Menschenrechtskonvention* (Springer 2003); Jan Kratochvíl, 'The Inflation of the Margin of Appreciation by the European Court of Human Rights', (2011) 29(3) *Netherlands Quarterly of Human Rights*: 324-357; George Letsas, 'Two Concepts of the Margin of Appreciation', (2006) 26 *Oxford*

only relates to *how* but not *if* a State must protect a right in a particular situation, i.e. whether it also concerns the extent to which a positive obligation exists, not just how it is to be fulfilled. The ECtHR seems to apply it to both.¹⁴⁵ It can be questioned whether it serves any useful purpose to refer to the margin of appreciation when making the point that the Court will not specify a specific measure that States must take in order to fulfil a certain positive obligation, since then there is no question of a smaller or wider margin, only an understanding that States enjoy deference.¹⁴⁶ The Court has repeatedly stated that where the State is required to take positive measures, the choice of means is in principle a matter that falls within the State's margin of appreciation.¹⁴⁷ In particular, it has emphasized that it is a matter of national discretion in what way States undertake the protection of individuals from the actions of other individuals.¹⁴⁸ Lavrysen finds that this may be due to the Court constructing positive obligations as exceptional, as opposed to negative obligations whose existence does not need to be separately justified.¹⁴⁹ Dröge on the other hand holds that this is because the factors which speak for a wide margin of appreciation are more often (although not always) present in cases involving positive obligations.¹⁵⁰

It is often suggested that the margin of appreciation is affected by the nature of the right in question. Legg submits that there is no direct correlation between the right in question and the margin of appreciation. He instead provides examples of how there are often fewer grounds for granting the State a margin of appreciation notably in cases where the right to life or prohibition of torture are at stake.¹⁵¹ Meanwhile, in relation to the right to private life, there are numerous examples of deference by the ECtHR to national policies. Nonetheless, the Court has noted that where a particularly important facet of an individual's existence or identity is at stake, the margin allowed to the State will normally be restricted.¹⁵² Where there is no consensus among member States as to the relative importance of the interest at

Journal of Legal Studies: 705–732; Giulio Itzcovich, 'One, None and One Hundred Thousand Margins of Appreciations: The Lautsi Case', (2013) 13(2) *Human Rights Law Review*: 287–308.

¹⁴⁵ Kratochvíl (2011) 328. See e.g. *Evans v. the United Kingdom*, 10 April 2007 (Grand Chamber), Appl. No. 6339/05, para. 77.

¹⁴⁶ Kratochvíl (2011) 334, 342.

¹⁴⁷ *Budayeva and Others v. Russia*, 20 March 2008 (Chamber), Appl. No. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, para. 134.

¹⁴⁸ E.g. *Powell and Rayner v. the United Kingdom*, 21 February 1990 (Chamber), Appl. No. 9310/81, para. 41.

¹⁴⁹ Lavrysen (2016) 194, 217.

¹⁵⁰ Dröge (2003) 369.

¹⁵¹ Legg (2012) 205–210. Lavrysen points out that the ECtHR only occasionally refers to a (narrow) margin of appreciation in cases dealing with Arts. 2 and 3. Lavrysen (2016) 193.

¹⁵² *Evans v. the United Kingdom*, para. 77.

stake or as to the best means of protecting it, particularly where the case raises sensitive moral or ethical issues, the margin will be wider. The same generally applies if the State is required to strike a balance between competing private and public interests or Convention rights.¹⁵³ The ECtHR has stressed that States enjoy a wide margin of appreciation in determining the best policy to adopt in difficult spheres such as problems with public health and safety. An impossible or disproportionate burden must not be imposed on the authorities, which have to make operational choices in terms of priorities and resources in these areas.¹⁵⁴

I argue that a more limited margin of appreciation applies to the prevention of violations of the right to physical and psychological integrity in the form of honour-related violence. One basis for this argument is the vulnerability of the victims.¹⁵⁵ Another argument is that honour-related violence affects important aspects of an individual's identity by denying her or him very personal choices in terms of social or sexual conduct. There is also the requirement for effective measures.¹⁵⁶ Essentially, in order to be effective, the choice of preventive measures by national authorities needs to take into account both the vulnerability of the victims (so that potential victims have access to the operational measures, facilities and services provided) and the character of honour-related violence (so that the measures are designed in a manner genuinely improving the situation). I find that the limited margin of appreciation applies to prevention of honour-related violence generally, as there exist no apparent reason for determining that different margins of appreciation would apply depending on which right the scrutiny departs from. This research stresses that measures taken to prevent deprivation of life or acts amounting to torture are likely to prevent also less severe forms of violence falling under the right to private life.

There would thus not seem to exist an obstacle to the ECtHR being specific on preventive measures based on the margin of appreciation. Nonetheless, the principle of subsidiarity, which is not subject to a graded scale, has caused at least the ECtHR to exercise self-restraint in indicating what measures are required in response to a specific situation, although not consistently.¹⁵⁷ As we shall see shortly, this may be changing.

The willingness of international human rights bodies to indicate in detail the measures that States are required to take to prevent gender-based violence

¹⁵³ Ibid.

¹⁵⁴ *Georgel and Georgeta Stoicescu v. Romania*, 26 July 2011 (Chamber), Appl. No. 9718/03, para. 59. The case concerned the issue of aggressive stray dogs, not interpersonal violence.

¹⁵⁵ See Ch. 2.1.2.

¹⁵⁶ See Ch. 2.1.3.

¹⁵⁷ Examples of cases where the ECtHR has abandoned the self-restraint include *Đorđević v. Croatia* and *Mudric v. Moldova*, 16 July 2013 (Chamber), Appl. No. 74839/10.

(including honour-related violence) are thus limited by the powers of the bodies as circumscribed by the above doctrines. The interpretative approach adopted by the human rights bodies vary. For example, the ECtHR regularly states that it is not the role of the Court to replace national authorities and to choose in their stead from among the wide range of possible measures that could be taken to ensure compliance with their positive obligations under the Convention.¹⁵⁸ Nonetheless, practice has shown that when faced with clear violations of a severe nature, human rights bodies, including the ECtHR, have occasionally been willing to indicate on a quite concrete level what the violating State should have done to comply with its positive obligations under the treaty in question.¹⁵⁹ The Court has indeed noted that in ‘certain special circumstances’, with a view to assisting the respondent State to fulfil its obligations under Article 46, it can indicate individual or general measures that can ‘put an end to the situation’ that has led to a violation.¹⁶⁰ Vulnerability might be one such special circumstance.¹⁶¹ Sicilianos notes that the wording of these indications range from pure proposals to orders.¹⁶² The ECtHR has also observed that sometimes, the nature of the violation does not leave any choice as to the measure to be taken.¹⁶³ The State parties to the ECHR have tacitly accepted the practice of the Court to indicate that a specific measure needs to be taken to the extent that one could talk of an evolutionary development of procedural rules.¹⁶⁴

There are indications that we might expect a clearer specification of preventive obligations by the ECtHR in the future. The Court has stressed that its indication of specific measures is not contrary to the principle of subsidiarity but on the contrary

¹⁵⁸ See e.g. *Opuz v. Turkey*, para. 165, *Beganović v. Croatia*, 25 June 2009 (Chamber), Appl. No. 46423/06, para. 80; *T.M. and C.M. v. the Republic of Moldova*, 28 January 2014 (Chamber), Appl. No. 26608/11, para. 37, *Bevacqua and S. v. Bulgaria*, para. 82.

¹⁵⁹ E.g. in a case where violence was committed due to the perpetrator’s mental illness, the ECtHR held that there was a positive obligation under Art. 3 to subject him to mandatory medical treatment. See *Mudric v. Moldova*, para. 55.

¹⁶⁰ E.g. *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)*, 30 June 2009 (Grand Chamber), Appl. No. 32772/02, para. 88 and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, 17 July 2014 (Grand Chamber), Appl. No. 47848/08, para. 159.

¹⁶¹ See Zimmermann (2015) 562.

¹⁶² Linos-Alexander Sicilianos, ‘The Role of the European Court of Human Rights in the Execution of its own Judgments: Reflections on Article 46 ECHR’ in Seibert-Fohr and Villiger (2014) 286; 293. He noted that by the year 2014, there were an estimated 150 judgments where the Court had indicated specific measures based on Article 46 of the ECHR.

¹⁶³ *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)*, para. 88 and *Mudric v. Moldova*, para. 55. In these cases, specific measures were indispensable to avoid harm. This approach is in line with the interpretation of the ILA study on due diligence, which finds that when specific measures are indispensable to avoid harm, the State’s choice of preventive measures can be limited. See Second ILA Report, 7-8.

¹⁶⁴ Cremer (2014) 57.

contributes to its implementation by reducing the risk of similar cases reaching the Court in the future.¹⁶⁵ A Council of Europe expert review similarly recognises that the case law of the ECtHR (in particular the Grand Chamber) could provide more specific guidance in order to increase the understanding among States of what measures are needed in order to prevent similar violations in the future.¹⁶⁶

As for the ICCPR, the HRC generally leaves the methods of implementation up to the States, noting that these can constitute legislative, judicial, administrative, educational and other appropriate measures.¹⁶⁷ The Inter-American human rights system for its part has applied the notion of the margin of appreciation only rarely and with great caution,¹⁶⁸ and has issued some very concrete instructions to States on how to prevent gender-based violence.¹⁶⁹

In addition to the above considerations, there are practical reasons why it is not feasible to draft any ultimate list of mandatory individual or general measures applicable to every situation where there is a threat of honour-related violence. Obviously, situations differ so that measures that are essential in one case are ineffective in another. The identification of the most proper measures can therefore only be made by the national authorities dealing with the case. Another reason is the fact that the person under threat must be given a say in how she (or he) is to be protected against violence. One woman under threat may want to just leave her husband and never look back, another may want to remain with the family but without any threat of violence while a third may want to initially be at a safe distance from her family but receive assistance in changing the manner that the family members perceive protection of their honour so that she can eventually return to live with her family.¹⁷⁰

The ability of human rights bodies to spell out precise measures in judgments and decisions is thus limited for several reasons. However, none of the principles or doctrines named above arguably preclude human rights bodies from indicating a set of preventive measures alternative or additional to those taken by the State that

¹⁶⁵ Zimmermann (2015) 548.

¹⁶⁶ Council of Europe, *The longer-term future of the system of the European Convention on Human Rights*, Report of the Steering Committee for Human Rights (CDDH) (11 December 2015), para. 114. The report makes a comparison to the pilot judgment procedure. However, the CDDH does not go as far as suggesting a formal practice whereby the Court would indicate general measures in its judgments; see para. 163.

¹⁶⁷ HRC General Comment No. 31, para. 7.

¹⁶⁸ Duhaime (2014) 303.

¹⁶⁹ E.g. *Cotton Field case*, paras. 540-543.

¹⁷⁰ For a discussion of women's agency in situations of violence, see e.g. Martha R. Mahoney, 'Victimization or Oppression? Women's Lives, Violence and Agency' in Fineman and Mykitiuk (1994). Situations where a person's right to physical and psychological integrity clashes with her or his right to personal autonomy are discussed in Grans (2016) 176.

would fulfil the obligations of the State in a similar situation, although such a list cannot be exhaustive.

There are also other avenues than judgments and decisions that could provide such guidance. It would be highly beneficial if preventive obligations could be spelled out more clearly in relevant general comments and observations on treaty reports. Not being restricted to the scrutiny of individual cases, relevant special rapporteurs would also have ample opportunity to issue reports on the obligation to prevent violations of the right to physical and psychological integrity in the form of private acts of gender-based violence from the perspective of their mandates.¹⁷¹ As for the ECtHR, the pilot judgment procedure designed to identify systemic problems underlying repetitive cases could in the future constitute a potential avenue for the Court to provide a State with clear indications of the preventive measures it should take against honour-related violence.¹⁷² So far, no pilot judgment has concerned failures in preventing acts of private individuals. Considering the widespread nature of gender-based violence, at some point there may exist sufficient cases from a single State to warrant a pilot judgment on this issue.¹⁷³ The pilot judgments have on occasion provided rather clear directions for how the State is to prevent further violations, although the wording of the Court is always careful when recommending certain action.¹⁷⁴

A largely unexplored question is the interplay between the margin of appreciation and the principle of due diligence. In certain areas, States must show a stricter diligence, as we shall see below. Logically, the margin of appreciation is correspondingly smaller in these areas.¹⁷⁵ A further question is if it is relevant to the margin of appreciation whether we are talking about general measures or individual measures. In individual cases, the context and individual circumstances are given, which may limit the number of possible ways to address the situation. Meanwhile, when it comes to general preventive measures, there is a wide array of methods, and regrettably only limited reliable research on the effectiveness of various alternatives.¹⁷⁶

¹⁷¹ So far, mainly the Special Rapporteur on Violence against Women has done so, and only in the context of other issues.

¹⁷² See Rule 61 in the Rules of the Court (14 November 2016).

¹⁷³ Since the procedure is set up also to address the potential inflow of future cases, only a few similar applications may be sufficient. See *Kurić and Others v. Slovenia*, 26 June 2012 (Grand Chamber), Appl. No. 26828/06, para. 414.

¹⁷⁴ Lize R. Glas, 'The Functioning of the Pilot-Judgment Procedure of the European Court of Human Rights in Practice', (2016) 34(1) *Netherlands Quarterly of Human Rights*: 41–70, 54–55.

¹⁷⁵ However, Kratochvíl notes that a wide margin of appreciation does not always indicate a less strict scrutiny by the Court. See Kratochvíl (2011) 330.

¹⁷⁶ However, there are studies showing the effectiveness of properly designed awareness-raising measures, see WHO, *Eliminating Female Genital Mutilation: An Interagency Statement*, OHCHR, UNAIDS,

3. Results of the research

The thesis is composed of the five articles listed below as well as the present summarizing and analytical part. The articles benefit from being read in chronological order. They are annexed in the end of the thesis.

1. Lisa Grans, 'The State Obligation to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Case of Honour-Related Violence', (2015) 15 *Human Rights Law Review*

2. Lisa Grans, 'A Right Not to Be Left Alone – Utilising the Right to Private Life to Prevent Honour-related Violence', (2016) 85 *Nordic Journal of International Law*

3. Lisa Grans, 'Honour-Related Violence and Children's Right to Physical and Psychological Integrity', (2017) 35(2) *Nordic Journal of Human Rights*

4. Lisa Grans, 'The Istanbul Convention and the Positive Obligation to Prevent Violence', (2018) 18(1) *Human Rights Law Review*

5. Lisa Grans, 'The Concept of Due Diligence and the Positive Obligation to Prevent Honour-Related Violence: Beyond Deterrence', (2018) 22(5) *International Journal of Human Rights*

3.1. Application of the prohibition of torture and other ill-treatment to honour-related violence

Lisa Grans, 'The State Obligation to Prevent Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: The Case of Honour-Related Violence', (2015) 15 *Human Rights Law Review*: 695-719

My first article seeks to answer the following two questions: Can honour-related violence constitute torture or other cruel, inhuman or degrading treatment or

UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO (2008) 13. A parallel can be made between FGM and other forms of honour-related violence, as these share the central characteristic of being incited by the community. See Grans (2016) 193.

punishment? If yes, does this entail an obligation to take preventive measures not only in individual cases but also on the societal level? The article concludes that the prohibition of torture and ill-treatment can be applicable to instances of honour-related violence and discusses the positive obligations to prevent such acts of torture and ill-treatment. It establishes that there is a State obligation to prevent honour-related violence on both the general and the individual level, an argument that is followed up in subsequent articles.

While there is no explicit requirement in the general human rights conventions that States protect individuals against private acts of violence, the prohibition of torture and the right to private life have been interpreted to contain such an obligation.¹⁷⁷ The prohibition of torture and inhuman or degrading treatment or punishment is a norm that has generally not been applied to honour-related violence in jurisprudence, with the exception of *non-refoulement* cases. Legal writings linking honour-related violence to the prohibition of torture and other ill-treatment focus mainly on FGM. There is already a clear understanding that all forms of FGM violate the prohibition of torture and that State responsibility arises when the State instigates, consents or acquiesces to the treatment.¹⁷⁸ There has not been an equivalent analysis of other forms of honour-related violence, although reports of international human rights bodies have referred to *inter alia* forced marriage and honour killings within the context of torture.¹⁷⁹ This article seeks to address that gap. There is strong stigma attached to torture, and establishing that serious forms of honour-related violate this norm would add impetus to the prevention of the practice.

The understanding of the definition of torture has shifted with time, but it is generally regarded as being based on the criteria contained in Article 1 of CAT.¹⁸⁰ These are severe (physical or mental) pain or suffering; intentional infliction; specific purposes (including punishment for an act committed or suspected of having been committed, intimidation or coercion and discriminatory reasons);

¹⁷⁷ See Ch. 2.1.1 of this thesis.

¹⁷⁸ See HRC General Comment No. 28: Equality of rights between men and women, UN Doc. CCPR/C/21/Rev.1/Add.10 (2000), para. 11; CAT Committee General Comment No. 2, para. 18; Special Rapporteur on Torture, Annual Report, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. E/CN.4/1986/15 (19 February 1986), para. 38; Cultural practices in the family that are violent towards women, Report of the Special Rapporteur on Violence against Women, UN Doc. E/CN.4/2002/83, para. 6.

¹⁷⁹ See e.g. Concluding observation on the seventh periodic report of Finland, UN Doc. CAT/C/FIN/CO/7 (29 November 2016), paras. 28 and 29(f); Concluding observations on the fifth periodic report of the Russian Federation, UN Doc. CAT/C/RUS/CO/5 (11 December 2012), para. 13 and Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Third periodic report of Israel, UN Doc. CAT/C/SR/496 (29 November 2001), para. 54.

¹⁸⁰ Dewulf (2011) 80-81.

infliction by or at the instigation of or with the consent or acquiescence of a person acting in an official capacity.¹⁸¹ Based on the presumption that honour-related violence can fulfil the other criteria, the article concentrates on discussing the public official criterion. The prohibition of torture has long been applied primarily to acts by public officials, but its interpretation has now been somewhat widened. This development has notably taken place through private acts of violence against women,¹⁸² and the issue of corporal punishment of children in the home,¹⁸³ being dealt with as potential violations of the prohibition of torture. The interpretation of the prohibition of torture and its relationship to the right to private life has however been neither clear nor consistent.¹⁸⁴ Also in terms of addressing gender-based violence, the dividing line between acts of violence that fall under the prohibition of torture and other ill-treatment and those falling under the right to private life is not obvious. The ECtHR, for example, remains inconsistent regarding whether a case falls under Article 3 or 8.¹⁸⁵

Torture is still perceived by many scholars as linked to deprivation of liberty, thus an official context.¹⁸⁶ This research takes issue with that approach. It also makes clear that the manner of perceiving prevention of official torture is not applicable as such to the very different context of private acts of violence amounting to a violation of the prohibition of torture. The preventive measures that States must initiate when an individual is threatened by violence differ depending on whether the perpetrator is a private individual or a public official.¹⁸⁷ Measures required for the prevention of torture within the private context have been seen as mainly confined to criminalization in national law and efficient application of that law. This article argues that such measures are not sufficient to address private acts of violence amounting to torture and not enough to fulfil the positive obligations under the

¹⁸¹ The question whether honour-related violence can fall within the definition of torture is discussed in Grans (2015) 700-704. See also Special Rapporteur on Torture, Annual Report, UN Doc. A/HRC/31/57 (5 January 2016), para. 8, which notes that the purpose and intent elements of the definition of torture are always fulfilled if an act is gender-specific or perpetrated against persons on the basis of their sex, gender identity, real or perceived sexual orientation or non-adherence to social norms regarding gender and sexuality. Moreover, honour-related violence can result in severe pain or suffering and is intentionally inflicted.

¹⁸² See e.g. the ECtHR judgments in the cases of *Valiulienė v. Lithuania*, paras. 70, 85 and 86; *Opuz v. Turkey*, para. 176; *E.S. and Others v. Slovakia*, 15 September 2009 (Chamber), Appl. No. 8227/04, para. 44.

¹⁸³ E.g. ECtHR judgment in the case of *A. v. the United Kingdom*, para. 24

¹⁸⁴ See e.g. footnote 18 in the concurring opinion of Judge Pinto de Albuquerque in *Valiulienė v. Lithuania*.

¹⁸⁵ See discussion in Grans (2015) 186.

¹⁸⁶ See e.g. Renzulli (2016) 1245.

¹⁸⁷ Compare *Valiulienė v. Lithuania*, para. 73.

prohibition of torture and other ill-treatment. When it comes to gender-based violence, responses centred on criminal justice can have a number of harmful consequences.¹⁸⁸ One such consequence has been the introduction of mandatory State intervention (for example mandatory arrests and no-drop prosecutions) which may not always be in the best interest of the victim.¹⁸⁹

The prohibition of torture is generally treated separately from the prohibition of inhuman or degrading treatment or punishment. While some authors have regarded degrading treatment as the least severe form of ill-treatment, others disagree, arguing that the distinction between inhuman and degrading treatment is primarily qualitative.¹⁹⁰ From a prevention perspective it is however irrelevant if the violence a person is threatened by will, if materializing, constitute torture, ill-treatment or degrading treatment or perhaps a violation of the right to private life - it must be prevented. This view has not yet been universally embraced. Rodley notes that prevention is seen as protection by another name, and thereby remedial rather than prophylactic.¹⁹¹ However, Renzulli and Murray *et al.* argue that there is an autonomous obligation to prevent torture that is not dependent on and should not be linked to the prohibition of torture as such.¹⁹² I share this view and suggest that disconnecting the level of severity from the obligation to intervene to prevent violence is crucial to a coherent approach to prevention.¹⁹³

The article argues that under the prohibition of torture and other ill-treatment, States have two-fold obligations to prevent honour-related violence. Firstly, they are obliged to take preventive measures against honour-related violence on a general level. This obligation is still developing. Secondly, they must take effective measures to prevent individual instances of violence. This obligation arises in particular in relation to persons in a vulnerable position as well as where there exists a risk of a serious violation.¹⁹⁴

I will first summarize the article's findings in terms of general measures on the societal and community level. While there appears to exist an increasing understanding that the obligation to prevent torture perpetrated or directly

¹⁸⁸ See e.g. Julie Goldscheid and Debra J. Liebowitz, 'Due Diligence And Gender Violence: Parsing Its Power And Its Perils', (2015) 48 *Cornell International Law Journal*: 301-345, 301.

¹⁸⁹ *Ibid.*, 314. The issue of the autonomy of the victims of honour-related violence is discussed further in Grans (2016) 176-179.

¹⁹⁰ Natasa Mavronicola, 'Crime, Punishment and Article 3 ECHR: Puzzles and Prospects of Applying an Absolute Right in a Penal Context', 2015 (15) *Human Rights Law Review*: 721-743, 725.

¹⁹¹ Nigel S. Rodley, 'Reflections on Working for the Prevention of Torture', (2010) 6(1) *Essex Human Rights Review*: 15-21, 21.

¹⁹² Renzulli (2016) 1248, and Rachel Murray, Elina Steinerte, Malcolm Evans and Antenor Hallo de Wolf, *The Optional Protocol to the UN Convention against Torture* (Oxford University Press, 2011) 61.

¹⁹³ See Grans (2018 A) 143.

¹⁹⁴ See Grans (2016) footnote 86 and accompanying text.

condoned by public officials is not dependent upon the existence of any direct threat of torture, this understanding does arguably not extend to private acts of violence. This research concludes that an obligation to undertake preventive measures on a general level to prevent acts of honour-related violence amounting to torture arises where there is a pattern of such violence. Such an obligation arguably exist under Articles 5 and 7 of the ACHR,¹⁹⁵ Articles 7(b), 7(c) and 7(e) of the Belém do Pará Convention,¹⁹⁶ Article 12 of the Istanbul Convention,¹⁹⁷ Articles 2(2) and 4(d) of the Maputo Protocol, Article 16 of the African Charter on the Rights and Welfare of the Child,¹⁹⁸ Articles 4(b), 8(b), 15(2) and 17 of the Convention on the Rights of Persons with Disabilities,¹⁹⁹ Article 19 of the CRC²⁰⁰ and Article 5(a) of CEDAW.²⁰¹ The HRC and the Committee against Torture (CAT Committee) have until date taken a more restrictive approach to the obligations of the State to prevent torture on the general level under the CCPR and CAT. Both Conventions still contain provisions (Article 2(2) of the CCPR read in conjunction with Articles 7, 9 and 24(1) and Article 2(1) of CAT, respectively) which could be interpreted as requiring States to prevent private acts of violence amounting to torture both on an individual and a societal level through other means than criminal law. So far, the HRC has been reluctant to demand prevention of private acts of violence through other means, Edwards and van Leeuwen find.²⁰² The HRC's relatively new General Comment on the right to liberty and security of person indicates this might change.²⁰³ The CAT Committee also focuses on criminal legislation as the main method of preventing private acts of torture, thus requiring protective and remedial measures rather than primary prevention.²⁰⁴

¹⁹⁵ 'Cotton Field' case, para. 282.

¹⁹⁶ Ibid.

¹⁹⁷ Art. 12(1) lays down an obligation to take the necessary measures to promote changes in social and cultural patterns of behaviour in order to eradicate prejudices, customs, traditions and practices based on the idea of the inferiority of women or on stereotyped roles for women and men.

¹⁹⁸ See African Committee of Experts on the Rights and Welfare of the Child, *Centre for Human Rights, University of Pretoria and La Rencontre Africaine pour la Defense des Droits de l'Homme v. Senegal*, 15 April 2014, Decision No. 003/Com/001/2012, paras. 67-68.

¹⁹⁹ See Committee on the Rights of Persons with Disabilities, *X v. Tanzania*, 18 August 2017, Communication No. 22/2014, paras. 8.6, 8.7 and 9(b).

²⁰⁰ See CRC General Comment No. 13, paras. 45-47.

²⁰¹ See e.g. Cook and Cusack (2010) 73.

²⁰² Edwards (2011) 251 and Fleur van Leeuwen, *Women's Rights are Human Rights: The Practice of the United Nations Human Rights Committee and the Committee on Economic, Social and Cultural Rights* (Intersentia, 2010) 146.

²⁰³ HRC General Comment No. 35, UN Doc. CCPR/C/GC/35 (2014), para. 9. It indicates that States must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws.

²⁰⁴ Edwards (2011) 251.

The scale of honour-related violence in a State affects which measures can reasonably be required to prevent this form of violence effectively. A certain basic institutional set-up is clearly required in every state, as States are expected to be able to protect its inhabitants against private acts of violence. In States where there have only been a few known cases of honour-related violence, it may be sufficient to concentrate expertise on the issue to one public body that is tasked with coordinating the response to all cases where there is a risk of honour-related violence, including training of officials as necessary. When honour-related violence is widespread, criminal legislation on its own will not constitute an effective measure capable of affecting the practice.²⁰⁵ In such situations, national authorities must put in place an effective system that enables all relevant local authorities to identify threats and intervene to prevent honour-related violence from occurring or recurring within a family. Relevant measures would include operating protocols for various public officials encountering this form of violence, a sufficient amount of shelters, availability of protection orders and modalities for relocating high-risk persons to long-term places of residence. These measures are essentially identical to those needed to prevent violence against women. To prevent honour-related violence, additional measures aimed at bringing about a change in the social norms and values that underlie it are required.²⁰⁶ Awareness raising designed for violence against women in general is not sufficient. In order to be effective, the preventive measures must entail long-term awareness-raising initiatives within the communities where honour-related violence is practiced.²⁰⁷ The choice of the concrete manner of doing this is largely left up to national authorities, but the measures that they choose must be designed to be effective. As has been demonstrated above in Chapter 2.1.3, this is not as vague a requirement as it might appear.

The legal basis for the State obligation to prevent honour-related violence on the individual level is the same as for measures on the societal level. However, the measures required to fulfil the obligation to prevent honour-related violence in an individual case differ from those above. I argue that the obligation to undertake preventive measures on the individual level in concrete cases arises when there is a serious threat to life or health. In ECtHR case law, only a real and immediate risk of

²⁰⁵ See Joint General Recommendation of the CEDAW Committee and the CRC Committee, para. 79; CAT General Comment No. 2, para. 4; HRC General Comment No. 20 on Article 7, HRI/GEN/1/Rev.1 at 30 (1992), para. 8.

²⁰⁶ So are a number of other measures mentioned in Ch. 3.2. See text accompanying footnote 229.

²⁰⁷ This is recognised notably by the IACCommHR, which has found that undertaking preventive measures targeting communities forms part of the due diligence obligation to prevent violence against women. See Annual Report 2002, The situation of the rights of women in Ciudad Juárez, Mexico: The right to be free from violence and discrimination, para. 158.

ill-treatment triggers the obligation to take preventive action.²⁰⁸ This is also the approach of the IACtHR.²⁰⁹ In cases of honour-related violence (and domestic violence),²¹⁰ it may often be too late to prevent violence from happening if authorities act only when there is an immediate risk. I suggest that when the person under threat is a person in a vulnerable position, the obligation to prevent violence should be interpreted as requiring that authorities take certain other preventive measures already earlier, at the stage when a credible threat of honour-related violence exists.²¹¹ Delaying intervention in a family where serious acts of violence can be immediately triggered by real or perceived events outside the home, the effect of which may not be apparent to the relevant authorities until it is too late, is not acceptable but would arguably violate the obligation to effectively prevent torture of persons in a vulnerable position.²¹²

Furthermore, requiring that a person under threat demonstrate with any certainty that she or he risks acts that amount specifically to torture or ill-treatment would be rather absurd, as no one can know in advance what form violence might take, not even when very detailed threats have been issued, as is not infrequently the case with honour-related violence. The CAT Committee has noted that the measures required to prevent torture and other forms of ill-treatment are the same.²¹³ There is an obligation to prevent also less serious forms of violence, which do not amount to torture or ill-treatment. It would therefore make sense to speak of a general obligation to prevent honour-related violence once there is a credible threat of such violence against a specific individual. I will return to this discussion in the next chapter, which deals with the obligation to prevent violations of the right to private life.

The choice of preventive measures must be decided in cooperation with the person under threat, but could include discussions between social workers and the whole family on the use of violence and/or offer of transfer to a shelter, depending on the risk at hand and the needs of the person under threat. Although

²⁰⁸ E.g. *Đorđević v. Croatia*, para. 139.

²⁰⁹ *'Cotton Field' case*, para. 280.

²¹⁰ Similarly, Concurring Opinion of Judge Pinto de Albuquerque in *Valiulienė v. Lithuania*, which pointed out that at the stage of an 'immediate risk' to the victim, it is often too late for the State to intervene and that the recurrence and escalation inherent in most cases of domestic violence makes it dangerous to the victim to require an immediacy of the risk.

²¹¹ The relevance of the vulnerability of persons risking honour-related violence is discussed in Ch. 2.1.2.

²¹² The implications of the principle of non-intervention of the State into the family on the one side and the victim's right to family life on the other side are considered in Grans (2016).

²¹³ CAT Committee General Comment No. 2, para. 3.

jurisprudence on working with families in this manner is still absent,²¹⁴ this approach cannot be said to remain entirely *de lege ferenda* but would be a correct application of the requirement for effective measures to prevent torture in the private sphere.

3.2. Utilising the right to private life to prevent honour-related violence

Lisa Grans, 'A Right Not to Be Left Alone – Utilising the Right to Private Life to Prevent Honour-related Violence', (2016) 85 *Nordic Journal of International Law*: 169-200

The previous article dealt with the implications of finding that certain forms of honour-related violence can fall under the prohibition of torture or ill-treatment. This article explores whether positive obligations to prevent honour-related violence stem also from the right to private life. The right to private life has a wide scope.²¹⁵ Here, we are primarily concerned with one aspect, the right to physical and psychological integrity. The article more specifically focuses on situations where acts of violence do not reach the level of severity required to fall within the definition of torture. These acts can include physical and psychological violence (including threats of violence) as well as attempts at denying a person to make very personal choices in life. The article seeks to answer the following questions: Does international human rights law oblige States to interfere in families in case of serious violations by family members of the right to private life in the form of honour-related violence? If so, what preventive measures are national authorities obliged to undertake?

The issue of when States are allowed, or obliged, to interfere in families in order to prevent less severe forms of honour-related violence is of considerable practical importance, as national authorities need to know whether there is a threshold of

²¹⁴ However, for an argument that there exist a due diligence obligation for authorities to interference on the family level, see IACommHR Annual Report 2002, para. 158. A similar obligation exists under the Istanbul Convention; see Ch. 3.4 of this thesis.

²¹⁵ A helpful categorisation of the rights entailed within the concept of the right to private life can be found in Nicole Moreham, 'The right to respect for private life in the European Convention on Human Rights: a re-examination' (2008), 1 *European Human Rights Law Review*: 44-79.

severity that the violence must meet before they should intervene.²¹⁶ Not every act that affects a person's integrity will violate the right to private life. The ECtHR has held that the adverse effects on an individual's physical or psychological integrity need to be 'sufficient' for it to fall under the right to private life under the ECHR.²¹⁷ The HRC has taken a similar approach.²¹⁸ My article concludes that while the CRC requires States to interfere into individual cases of honour-related violence against children without regard to any minimum threshold of severity,²¹⁹ for adults a positive obligation to interfere arises only when the violence reaches a minimum level of severity or when the victim is in a vulnerable position. This minimum level of severity can also be achieved in the case of violations falling under the right to private life.²²⁰

In deciding when and how to intervene into an individual case of honour-related violence, national authorities will need to take into account that the victim's right to physical and psychological integrity may conflict with her or his right to autonomy. Persons who risk or experience honour-related violence retain their right to personal autonomy. Where there is a risk of honour-related violence motivating interference by the authorities, the measures cannot be uniform and automatic.

Jurisprudence regarding negative obligations, in other words the obligation of States to refrain from intervening into private life, demonstrates that States clearly are permitted to interfere also in certain situations where private acts of violence do not constitute torture or ill-treatment. The main rule still is that States should not interfere in private and family matters and that the exceptions need to be strictly applied. Individuals are entitled to undertake acts that can damage themselves physically or psychologically without interference by the authorities. There must for example exist particularly weighty reasons for the authorities to be permitted to interfere in private matters such as sexual life. A factor that justifies State interference is the lack of consent of one party to the act in question. In such cases, the person who is not consenting need not request or even agree to State interference for the State to be allowed to intervene.²²¹ Even where the victim of violence consents

²¹⁶ The severity of specific acts of violence depends on all the circumstances in which they takes place, including whether the victim is in a vulnerable position and the combined effect of any series of acts of violence.

²¹⁷ *Costello-Roberts v. the United Kingdom*, 25 March 1993 (Chamber), Appl. No. 13134/87, para. 36.

²¹⁸ HRC General Comment No. 35, para. 9.

²¹⁹ The State obligation to interfere into families where there is a threat of honour-related violence against children is discussed in Grans (2017).

²²⁰ See e.g. the judgments of the ECtHR in *A. v. Croatia*, 14 October 2010 (Chamber), Appl. No. 55164/08, paras. 79-80 and *Hajduová v. Slovakia*, 30 November 2010 (Chamber), Appl. No. 2660/03, para. 52.

²²¹ See *K.A. and A.D. v. Belgium*, 17 February 2005 (Chamber), Appl. Nos. 42758/98 and 45558/99, para. 83.

to the violence, States may be allowed to take measures of protection. The ECtHR (from which most relevant jurisprudence on the issue derives) in principle has left it up to each State to decide what level of harm should be tolerated in cases where a victim of violence consents to the violence.²²²

As for prosecuting offenders against the wish of the victim of violence, the ECtHR has noted that authorities should seek to ‘strike a balance between a victim’s Article 2, Article 3 or Article 8 rights in deciding on a course of action’. In determining whether an intervention such as prosecution unsupported by the victim should proceed, certain factors should be considered. These include the seriousness of the allegation, the nature of the injuries, whether a weapon was used, whether threats are continuing, premeditation, the effects on children of the household, whether there is a continued risk to the victim or others, the previous and current state of the relationship between the victim and the perpetrator and the perpetrator’s criminal record.²²³ The article concludes that as a rule States can interfere against less severe honour-related violence violating the right to private life only on the request or with the consent of the victim, except in cases where the victim is a child or another person in a vulnerable position. Where the violence is severe enough to fall under right to life or the prohibition of torture and ill-treatment, national authorities should be able to prosecute also against the wishes of the victim.²²⁴

Existing jurisprudence does not exclusively concern the limits to the permissibility of State interference in private relations. It also indicates that States possess certain obligations to interfere to protect individuals against less severe acts of violence by private persons. While international human rights bodies have largely left it up to States how they implement the obligation to protect individuals from violence, allowing them a wider the margin of appreciation in respect of positive obligations than in relation to negative obligations, they must demonstrate a minimum level of care in doing so in accordance with the principle of due diligence. States are held to enjoy a wider margin of appreciation with regard to Article 8 than

²²² *Laskey and Others v. the UK*, 19 February 1997 (Chamber), Appl. Nos. 21627/93, 21628/93 and 21974/93, para. 44.

²²³ *Opuz v. Turkey*, para. 138.

²²⁴ While there does not seem to exist an obligation to prosecute even severe forms of violence in the public interest when this is against the wishes of the victim, the possibility should exist in domestic law. The ECtHR has noted that the more serious the offence or the greater the risk of further offences, the more likely that the prosecution should continue in the public interest, even if the victim withdraws the complaint. See *Opuz v. Turkey*, paras. 139, 145. Also Art. 55 of the Istanbul Convention requires that prosecution of specific forms of violence should not be wholly dependent upon the complaint of the victim. The possible application to private acts of violence of the obligation under Art. 7(1) of CAT to prosecute suspected perpetrators of torture would benefit from further legal analysis. This, however, falls outside the scope of the present research.

Article 3.²²⁵ In this context, it should be kept in mind that States are obliged not only to provide redress for past injury but also to actively take measures to prevent future injury.²²⁶ This entails an obligation to adopt measures that provide immediate assistance in acute situations, including a duty to impose sanctions or otherwise enforce the obligation to refrain from using violence.²²⁷ The measures must be designed to be effective. The principle of due diligence (to which I will return in more detail in the last article) requires that national authorities take all measures within the scope of their powers which, judged reasonably, could have been expected to avoid the risk of ill-treatment.²²⁸

As noted above, in countries or regions where there is a pattern of honour-related violence, States have an obligation to undertake measures on the general level. Such an obligation arises under CEDAW, the Istanbul Convention and the Belém do Pará Convention, and can be held to arise under the right to private life and prohibition of torture under other conventions. These measures include education and awareness-raising measures, which (as noted in Chapter 3.1) should target communities where honour-related violence is prevalent rather than the population at large. The general measures required also include criminalisation of severe physical and psychological violence, adoption of necessary civil legislation, appropriate administrative instructions and an institutional setup sufficient to protect effectively against honour-related violence. A sufficient institutional setup by necessity implies a requirement to ensure for example access to shelters as well as procedures ensuring prompt response to emergency calls concerning honour-related violence, availability of protection orders and authorisation to detain persons posing a serious and immediate threat to the physical and psychological integrity of another person. These specific requirements have been mentioned in individual judgments, decisions and reports of international human rights bodies.²²⁹

²²⁵ Steven Greer, *Margin of Appreciation: Interpretation and Discretion under the European Convention of Human Rights*, Human Rights Files No. 17 (Council of Europe Publishing, 2000).

²²⁶ E.g. HRC General Comment No. 35, para. 9.

²²⁷ See *Bevacqua and S. v. Bulgaria* (para. 65), where the ECtHR however uses caution in indicating what the State would have been required to do to prevent violence.

²²⁸ *Dorđević v. Croatia*, para. 139.

²²⁹ Arts. 7(d) and 8(d) of the Belém do Pará Convention and Arts. 23 and 53 of the Istanbul Convention expressly require States to provide for shelters and protection orders. In *Bevacqua and S. v. Bulgaria* (para. 83), the ECtHR referred to the need for sanctions or other enforcement methods that would have protected the victim against renewed violations of her physical integrity. In *Fatma Yildirim v. Austria*, 6 August 2007, Communication No. 6/2005, para. 12.1.5, the CEDAW Committee expressly required detention of perpetrators in similar situations. In *A.T. v. Hungary*, the CEDAW Committee held restraining or protection order and shelters should be available and accessible. See *A.T. v. Hungary*, 26 January 2005, Communication No. 2/2003, para. 9.4. In *Şahide Goekce v. Austria*, 6 August 2007, Communication No. 5/2005, para. 12.1.4, the CEDAW Committee required prompt reactions to

The obligation to ensure adequate operating protocols and a possibility to relocate high-risk persons for the long term were already mentioned in the previous Chapter. My research finds that the requirement to take these preventive measures arises regardless of whether the issue of prevention of honour-related violence is scrutinized from the perspective of the right to life or the prohibition of torture.²³⁰

For States having ratified the Istanbul Convention, more specific preventive obligations on the general level apply. These include training for relevant professionals on detection and prevention of violence, ensuring effective cooperation between all relevant domestic agencies involved and allocation of appropriate financial and human resources to the prevention of violence. While the Istanbul Convention does not explicitly require measures targeting perpetrators, their families and communities supporting the use of honour-related violence, a requirement for such measures may be implicit.²³¹ It can also be argued that the obligation of States parties to the ECHR to provide effective protection against violence for vulnerable individuals would entail an obligation to take precisely such measures. However, there is yet no case law specifically on this issue.

In order to demonstrate the practical application of the conclusions of the article, it provides examples of the application of preventive obligations to specific forms of honour-related violence against adults. It indicates minimum measures of prevention that should be undertaken in cases of physical or psychological violence, forced virginity examinations, forced marriage and prevention of marriage.²³² Although the measures specified by necessity have to remain generally formulated as the examples are abstract, they can provide guidance to national authorities struggling with similar cases.

3.3. Children subjected to honour-related violence

emergency calls. In her annual report from 2017, the Special Rapporteur on Violence against Women stressed that there is an obligation to provide shelters and implement protection orders and that this obligation is essential to the prevention of gender-based violence. Regrettably, she finds, many States misguidedly do not perceive establishment of shelters as a legal obligation. See UN Doc. A/HRC/35/30 (13 June 2017), paras. 20, 23 and 68. I argue that this can be corrected by a better understanding of the obligation to prevent violence with due diligence (see Ch. 3.5).

²³⁰ However, the jurisprudence of international human rights bodies has not yet clearly established the full set of these preventive obligations particularly on the general level; see Grans (2018 B).

²³¹ This matter is discussed in Grans (2018 A) 145; 151.

²³² It should be recalled that in certain regions, so called virginity examinations are routinely undertaken when girls' or women's sexual conduct is called into question for reasons of honour, although such examinations have no scientific value. See IRCT Independent Forensic Expert Group, *Statement on virginity testing*, (2015) 25(1) *Torture* 66.

Lisa Grans, 'Honour-Related Violence and Children's Right to Physical and Psychological Integrity', (2017) 35(2) *Nordic Journal of Human Rights*: 146-161

This article addresses the limits imposed by international human rights law on parental discretion in raising their children in accordance with their own culture and belief. The analysis touches upon the discussion of cultural relativism of human rights, but this is not its focus. A matter of particular interest is the partial parallel between corporal punishment of children and honour-related violence directed at children. Also the principle of the best interests of the child is explored. This piece of research seeks to answer the following questions: Is there a difference in the level of protection against honour-related violence for children and for adults?²³³ Are measures designed against corporal punishment of children in the home sufficient to protect the child's right to physical and psychological integrity in cases of honour-related violence?

Under international human rights law, a diligent State should take special measures to protect children against violence. State practice in relation to corporal punishment in the home indicates that a clear legal prohibition is not sufficient to effect real change in the lives of children. Newell has succinctly explained why corporal punishment in the home remains accepted by so many individuals. It is easy enough to condemn extreme violence against children (such as rape or trafficking) perpetrated by others. Due to the personal dimension, it is extremely difficult to think badly of corporal punishment, which many parents still use against their children. We do not want to think badly of our parents or our own parenting and so do not manage to see this as a human rights issue.²³⁴ The same applies to families practicing honour-related violence.

The protection of the autonomy of the family and the rights of parents to foster their children as they see best is strong in international human rights law. A number of declarations and recommendations of international organisations equally stress these rights of the parents. An important example is Article 5(1) of the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which confirms that the parents or the legal guardians of the child have the right to organise life within the family. They can do so in

²³³ Already the terminology used to demark various forms of violence against children in the home may belittle the acts as compared to corresponding acts against adults. See Gerturd Lenzer, 'Violence against children' in Wouter Vandenhoe and others (eds.), *International handbook of children's rights studies* (Routledge, 2015) 278.

²³⁴ Peter Newell, 'The Human Rights Imperative to Eliminate Physical Punishment' in Joan E. Durrant and Anne B. Smith (eds.), *Global Pathways to Abolishing Physical Punishment* (Routledge, 2011) 8.

accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.²³⁵

Consequently, there has been only limited discussion of State intervention into families to protect the physical and psychological integrity of children. Ertürk argues that the non-intervention of the State into private and family life is an ideological stand. She notes that the State certainly regulates in detail matters relating to work, taxation and compulsory education and thereby shapes private life. The area left untouched, she argues, is the domain on male supremacy, which entails authority to discipline family members.²³⁶

The power of parents over their children is however not unlimited under international human rights law, as the issue of corporal punishment in the home has shown. A basic premise in international human rights law is that human rights belong equally to everyone regardless of *inter alia* age, meaning children should not enjoy less protection of their physical integrity than adults do. A further premise is that vulnerable groups such as children may require special protection of their rights.²³⁷ There is international jurisprudence indicating that States are obliged to criminalize at least more severe forms of violence against children in the private sphere. This is required at least under the ECHR and the IACHR.²³⁸ Meanwhile, the CRC requires prohibition of all forms of violence against children in the home, including minor forms. The CRC Committee regards the right to physical and psychological integrity as an absolute right. It neatly links the right to protection against violence to human dignity, physical integrity and equal protection under the law.²³⁹

There is divergence among human rights bodies not only in relation to criminalization of violence against children. Despite the clear stand of the CRC Committee on the prohibition of all forms of violence against children and the almost universal ratification of the CRC, the jurisprudence of human rights bodies other than the CRC Committee has not provided clear enough limits for when the State has to intervene into the family in order to protect children. This research has provided some key conclusions in this respect. It is quite clear that States are obliged

²³⁵ UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, UN Doc. A/RES/36/55 (1981).

²³⁶ Yakın Ertürk, 'The Due Diligence Standard: What Does It Entail for Women's Rights?' in Benninger-Budel (2008) 33.

²³⁷ There is not complete agreement that children constitute a vulnerable group. Nifosi-Sutton points out that the HRC never has characterized children as a vulnerable group but that it instead stresses that children are entitled to special measures of protection because of their status as minors. See Nifosi-Sutton (2017) 79, referring to HRC General Comment No. 17, UN Doc. HRI/GEN/1/Rev.9 (Vol. I) (1989) 193, para. 4. By comparison, the HRC does regard women as a vulnerable group (*ibid.*, 80).

²³⁸ Grans (2016) 187.

²³⁹ CRC General Comment No. 13, UN Doc. CRC/C/GC/13 (2011), paras. 7(c), 17.

to prevent also minor forms of violence, in particular as regards persons in a vulnerable position.²⁴⁰ There however appears to exist a lack of understanding among States of this point. The jurisprudence of international human rights bodies also lags behind when it comes to physical and psychological integrity of children. When the CRC constitutes *lex specialis*, it should guide the interpretation of other human rights treaties in cases concerning children. This means that the prohibition of all forms of violence against children should be taken into account also by other human rights bodies than the CRC Committee. While most bodies do refer to the CRC as relevant, the full implication of the prohibition of all forms of violence is not reflected in the jurisprudence. Notably the response required of States to prevent violence has not been spelled out. The CRC Committee has clarified that the prohibition of violence against children entails an obligation to investigate also less severe forms of violence, so that supportive and educational measures can be introduced in the family in order to stop it from resorting to (further) violence. This aspect of ensuring the protection of children against violence is still to be embraced by influential human rights bodies such as the ECtHR and the IACtHR.

However, I advance that it would be wise not to turn exclusively to the CRC when dealing with cases involving violence against children, as this may not always be to their advantage. There is for example no explicit prohibition of torture in the CRC. While it does prohibit all forms of violence against children, a finding that a State has violated the prohibition of torture carries a particular stigma. Meanwhile, difficult definitional questions as to what constitutes violence against children regrettably remain unresolved, including circumcision of boys who are too young to consent to the acts. Some justify the procedure with the best interests of the child. While I do not regard the practice of circumcision of boys as a form of honour-related violence, as its main aim is not upholding family honour, it illustrates the complexity of the issue of what constitutes violence against children. An important distinction needs to be made between violence and medically necessary procedures. This article contends that violence can never be in the best interest of the child, even if it is used to make the child live according to the traditions of the community and thereby be accepted as its member. Tobin indeed notes that cultural and traditional practices are to be enjoyed by a child rather than imposed on her or him.²⁴¹ There is no international case law on the issue of circumcision of boys for non-medical reasons, but relevant national decisions include several decisions by the Finnish

²⁴⁰ Compare Council of Europe, *Human rights in culturally diverse societies, Guidelines adopted by the Committee of Ministers and Compilation of Council of Europe standards* (Council of Europe, 2016), para. 44, according to which States 'should strive to' adopt adequate legislation and introduce initiatives to prevent such violence. This author would have preferred a stronger wording better reflecting existing European standards.

²⁴¹ Tobin (2009) 376.

Supreme Court that male circumcision undertaken for religious reasons and in a medically appropriate manner is justified.²⁴² In the earlier of these cases, the Court noted that FGM, on the other hand, never could be justified on religious (or social) grounds.²⁴³ The fact remains that in some communities, FGM is regarded as being required by religion, despite the views of religious experts that no existing religion requires such a procedure. FGM can take a number of different forms, all of which are widely regarded as being contrary to the prohibition of torture. This is notwithstanding the fact that the less severe forms of FGM (the forms of which vary widely) include acts such as pricking the genital organs.²⁴⁴ In terms of severity, this may not always constitute more severe violence than infant male circumcision. To be clear, the intention of introducing this element of discussion is not to suggest to remove the less severe forms of FGM from the scope of the prohibition of torture, but to note the shortcomings of the academic legal analysis of male circumcision in light of comparable practices that girls are subjected to.²⁴⁵

This research calls for a clearer stand by human rights bodies such as the ECtHR regarding the positive obligation to effectively prevent violence against children in the home from happening. Furthermore, in the case of the ECtHR, explicitly lowering the threshold for violence susceptible to fall under Article 8 of the ECHR in the case of children would be in line with Article 19 of the CRC and the principle of ensuring particular protection for vulnerable groups. Human rights bodies could also make it clear that scrutinising the acts of the perpetrator *ex post facto* cannot be seen as compensating for a failure to take reasonable measures to prevent impending violence. In order effectively to prevent honour-related violence, parents must be made aware that all forms of violence against children is prohibited. This includes the use and threat of violence to force or pressure children to adhere to social norms regarding honour. Furthermore, parents must be provided with alternative ways to deal with situations where their children may act contrary to such norms. The CRC Committee has suggested relevant preventive measures that would be appropriate also in the case of honour-related violence.²⁴⁶

²⁴² KKO:2008:93, para. 29; KKO:2016:24, paras 33–34. A further condition imposed by the Supreme Court is that both parents agree to the circumcision as being in the best interest of the child; see KKO:2016:25, para. 33.

²⁴³ KKO:2008:93, para. 27.

²⁴⁴ Such acts fall within Type IV in the WHO Classification of FGM (2007), contained in WHO (2008) 24.

²⁴⁵ The discussion in international bodies also distinguishes the two. The standpoint of the Council of Europe on male infant circumcision is that what is needed are clearly defined medical and sanitary conditions under which it can take place as well as sufficient information on risks to enable parents to make an informed choice. See Parliamentary Assembly of the Council of Europe, *Freedom of religion and living together in a democratic society*, Resolution 2076 (2015), para. 9.

²⁴⁶ CRC General Comment No. 8, para. 40.

A very common form of honour-related violence is severely restricting the social life of girls. When it comes to regulating the forming of social relationships outside the family circle, parents retain the final say in relation to children. It is for example unlikely that a human rights body would find a State in violation of the right to private life for not protecting a teenager from intrusive parents who hinder her from meeting socially with persons of the opposite sex for whatever reasons, including honour.²⁴⁷ Jurisprudence on the matter is lacking, but there are still likely to exist some limits to the restrictions on social relationships that parents can impose on their children. Under Article 18(2) of the ICCPR, States are prohibited from allowing coercion of children when it comes to religion. It has been argued that States parties to the CRC are obliged to respect the rights of parents in providing direction to the child in religious matters but that such direction is subject to two conditions. First, the parental direction should take into account the evolving capacities of the child and second, the guidance should not be so heavy-handed that it amounts to coercion.²⁴⁸ An argument could be made that the same conditions apply to the forming of meaningful social relationships under the right to private life.²⁴⁹

I find that the nature of honour-related violence requires a response that is not identical to that used in cases of corporal punishment of children in the home. The requirement under the ECHR is that preventive measures should provide effective protection, in particular, of children and other vulnerable persons and includes an obligation to take reasonable steps to prevent ill-treatment of which the authorities have or ought to have knowledge.²⁵⁰ This requirement can be applied also to cases of oppressive practices and degrading treatment, which are based on cultural traditions.²⁵¹ In order to be effective, preventive measures will need to be taken on both the societal level and the individual level.

²⁴⁷ See Grans (2016) 197.

²⁴⁸ Van Bueren (1995), 746. A similar discussion is found in Eva Brems, 'Article 14: Right to Freedom of Thought, Conscience and Religion' and Garton Kamchedzera, 'Article 5, The Child's Right to Appropriate Direction and Guidance' in André Alen, Johan Vande Lanotte, Eugeen Verhellen, Fiona Ang, Eva Berghmans, Mieke Verheyde, and Bruce Abramson (eds.), *A Commentary on the United Nations Convention on the Rights of the Child* (Martinus Nijhoff Publishers, 2006) 29.

²⁴⁹ Here, the new concept of 'living together' that has been minted by the ECtHR might be relevant. Further discussion of the concept falls outside the scope of this thesis but it is discussed in Sarah Trotter, 'Living Together', 'Learning Together', and 'Swimming Together': *Osmanoğlu and Kocabaş v Switzerland* (2017) and the Construction of Collective Life', (2018) 18(1) *Human Rights Law Review*: 157-169.

²⁵⁰ *Z and Others v. the United Kingdom*, para. 73.

²⁵¹ Julie Ringelheim, *Diversité culturelle et droits de l'homme. La protection des minorités par la Convention européenne des droits de l'homme* (Bruylant, 2006) 417

On the societal level, adequate legislation is the first requirement. Under the CRC, violence against children in the home must be explicitly prohibited by law.²⁵² However, in order to have an impact, the adoption of legislation must be accompanied by measures supporting its implementation. It has been demonstrated in relation to the out-lawing of corporal punishment of children that mere criminalisation is not enough but in order to be effective, prevention needs to include other measures as well.²⁵³ Vandenhole indeed asks what comes first, legislation or awareness raising.²⁵⁴ In the case of corporal punishment of children in the home, both may need to be undertaken simultaneously to achieve an effective preventive effect.²⁵⁵ It would still be wise to put efforts into attitude change in relevant communities and families already before legislation is adopted.²⁵⁶ It can be argued that an obligation to undertake awareness-raising initiatives on honour-related violence in communities where this occurs arises under the CRC.²⁵⁷ The CRC obliges States to adopt all measures necessary to ensure that family members will respect and protect children's rights.²⁵⁸

When authorities undertake protection measures against honour-related violence in an individual case, the best interests of the child should be taken into account and the goal should be family unity, if possible. In relation to prevention of honour-related violence against children, taking the best interests of the child into consideration could be said to constitute part of the obligation to exercise due diligence. Children should be placed outside their family only as a last resort and normally only temporarily. This means that States should support parental education so that the family can provide an upbringing free from violence. If these efforts fail and parents remain a threat to the child, the child's right to physical and psychological integrity takes priority over the parents' rights of access.²⁵⁹ These

²⁵² The general preventive measures against honour-related violence are listed in the text accompanying footnote 229.

²⁵³ Kai-D. Bussmann, Claudia Erthal and Andreas Schroth, 'Effects of Banning Corporal Punishment in Europe: A Five-Nation Comparison' in Durrant and Smith (2011) 319.

²⁵⁴ Wouter Vandenhole, 'Children's rights from a legal perspective: Children's rights law' in Vandenhole and others (2015) 27, 36.

²⁵⁵ Bussmann, Erthal and Schroth (2011) 302, 319. The study demonstrates that a combination of legal prohibition and effective information campaigns have led to parents rejecting corporal punishment to a significantly greater extent than parents in countries where corporal punishment was not prohibited. However, information campaigns alone were less effective than prohibition alone.

²⁵⁶ Corinne Packer has demonstrated that attitude change needs to precede legislation when the aim is to change harmful practices. Corinne Packer, *Using Human Rights to Change Tradition. Traditional Practices Harmful to Women's Reproductive Health in Sub-Saharan Africa* (Intersentia, 2002) 204.

²⁵⁷ See Joint General Recommendation of the CEDAW Committee and the CRC, para. 59.

²⁵⁸ CRC General Comment No. 13, para. 46.

²⁵⁹ Compare *Elsholz v. Germany*, 13 July 2000 (Grand Chamber), Appl. No. 25735/94.

considerations apply equally to corporal punishment of children in the home. In cases involving honour-related violence against children, I argue that there in addition is a need for educational and supportive measures targeting not only the perpetrator of violence but the whole family, which needs to adopt a joint view that the honour of the family can be upheld without the use of violence or threats of violence.²⁶⁰ A legal obligation to undertake these specific measures may be developing after the adoption of the Istanbul Convention, to which I will now turn.

3.4. The potential of the Istanbul Convention

Lisa Grans, ‘The Istanbul Convention and the Positive Obligation to Prevent Violence’, (2018) 18(1) *Human Rights Law Review*: 133-155

This article addresses the prevention of honour-related violence from the perspective of the relatively new Istanbul Convention. It seeks to answer the following questions: What does the Istanbul Convention add to the existing legal framework in terms of prevention of honour-related violence? Can it help clarify what triggers the obligation to prevent such violence?

The interpretation of the Istanbul Convention is guided by the case law of ECtHR,²⁶¹ but it is also likely to itself influence how other international human rights bodies perceive the prevention of honour-related violence. The ECtHR has not been required to take a stand on the positive obligation to undertake primary prevention in individual situations. As violence has already occurred in cases that reach the Court, it has instead focused on scrutinising the State’s protective measures. However, the Court has repeatedly commented on the failure of States to undertake primary prevention on the general level, mainly on legislative shortcomings.²⁶² The committee set up to monitor the implementation of the Istanbul Convention, GREVIO, will have an important role to play in firstly, defining that there exists an obligation of primary prevention also on the individual level and, secondly, spelling out the concrete measures that would fulfil the preventive requirements under the Istanbul Convention. There is not much concrete guidance available to States from

²⁶⁰ This seems to be recognised in the Joint General Recommendation of the CEDAW Committee and the CRC, para. 57.

²⁶¹ Council of Europe, *Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence*, 11 May 2011 (‘Explanatory Report to the Istanbul Convention’), para. 29.

²⁶² E.g. *Opuz v. Turkey*, paras. 145 and 168.

other international human rights bodies as to their preventive obligations on the general level.²⁶³ For this reason, the rather detailed (legally binding) general obligations contained in the Istanbul Convention are likely to have an influence also beyond the Council of Europe system.

A key contribution of this article is its analysis of the unpublished preparatory materials of the Istanbul Convention. The material is used to throw light on certain legal points raised during the drafting process. The article problematizes the extent to which the Convention covers honour-related violence. The concern expressed in the article that the forms of honour-related violence covered and the applicability of specific provisions to honour-related violence is not made clear in the Convention text or the Explanatory Report seems to have been justified. Only two forms of honour-related violence are mentioned in the Convention, FGM and forced marriages. In the eight State reports submitted so far to GREVIO, the Committee set up to monitor the implementation of the Convention, only two (the reports of Denmark and Sweden) have reflected on measures taken against other forms of honour-related violence than FGM and forced marriages.²⁶⁴ None of the reports include information indicating that they would interpret the provisions applicable specifically to domestic violence, notably Article 16(1), to acts of honour-related violence. This provision lays down the important obligation to ensure there are programmes that teach perpetrators non-violent behaviour in interpersonal relationships.

In addition to perpetrator programmes, the Istanbul Convention also brings with it some other novelties in terms of preventive measures. Some of the novelties appear to be designed to address perceived gaps in ECtHR practice, such as the obligation in Article 56(1)(b) to inform the victim when a perpetrator escapes or is released from prison. McQuigg suggests that the Istanbul Convention may have an impact on the approach of the ECtHR as concerns keeping victims of violence informed of the outcome of the criminal proceedings against the perpetrator, including if the perpetrator escapes or is released.²⁶⁵ The threat to victims of honour-related violence remains after the perpetrators have served a prison sentence. Therefore, it is relevant for victims to know when perpetrators will be released so that they can take any necessary precautions. McQuigg foresees, probably quite

²⁶³ The available guidance is analysed in Grans (2018 B).

²⁶⁴ Sweden indeed uses the wide expression 'honour-related violence and oppression'. By 9 March 2018, the following States had submitted baseline reports: Albania, Austria, Denmark, Monaco, Montenegro, Portugal, Sweden and Turkey. GREVIO had published its conclusions on the first four of these reports.

²⁶⁵ Ronagh J.A. McQuigg, 'Domestic violence as a human rights issue: Rumor v. Italy', (2015) 26(4) *European Journal of International Law*: 1009–1025, 1023. A similar provision on release or escape of perpetrators is found in Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime [2012] OJ L 315/57, Art. 6(5).

rightly, that the influence of the Istanbul Convention on ECtHR practice might be smaller when it comes to provision of social support measures due to the financial implications involved.²⁶⁶

GREVIO has not yet had the opportunity to provide much guidance to States as to the extent of their obligations under the Convention. Its Secretariat has however issued several documents detailing the commitments that ratifying States undertake in relation to specific issues, including a factsheet on honour-related violence. While it focuses on protection rather than primary prevention, it makes several important observations. Notably, once a case comes to the attention of the authorities, all authorities are required to jointly assess the risk for the woman under threat and devise a safety plan for her.²⁶⁷ This is a much-needed clarification of the practical measures that must be taken in individual cases in order to prevent (further) violence.

A key general measure in preventing honour-related violence is supporting awareness raising aimed at families and communities where there is a risk of honour-related violence. I argue that an obligation to undertake such measures can be read into Article 13 of the Istanbul Convention. This would be a novel legal obligation within the European human rights system, although one could argue that a similar obligation also arises under the ECHR through the principle of effective measures.²⁶⁸

Another important legal novelty is the obligation to establish a national coordinating body. The obligations to put in place mechanisms for cooperation between different bodies involved in the prevention of violence and to allocate appropriate resources to such prevention can be said to already exist as part of the obligation under several other conventions to prevent violence with due diligence,²⁶⁹ but in the Istanbul Convention these obligations are made explicit. The same might be said for the obligation to undertake data collection and support research.

The article furthermore discusses the nature of the preventive obligations under the Istanbul Convention in order to establish whether it foresees primary prevention or whether it only requires States to react to violence after it has taken place. This

²⁶⁶ Ronagh J.A. McQuigg, 'What potential does the Council of Europe Convention on Violence against Women hold as regards domestic violence?', (2012) 16 *The International Journal of Human Rights*: 947-962, 957. Social support measures are discussed notably in paras. 118, 122 and 126 of the Explanatory Report to the Istanbul Convention.

²⁶⁷ Council of Europe, *Crimes committed in the name of so-called honour*, available at: coe.int/en/web/istanbul-convention/publications. The clarification is useful, as it means that national authorities cannot focus only on severe violence. Severe violence is required for cases to be included in the MARAC (Multi-Agency Risk Assessment Conference) procedures, which are a common tool in Europe.

²⁶⁸ See discussion in Ch. 2.1.3.

²⁶⁹ See Grans (2018 B) 6 (CRC); 10 (ECtHR, although implicitly); 13 (CEDAW).

entails taking on the task of trying to distinguish protection from prevention. The research submits that the triggers for the obligations to protect and prevent differ. It concludes that it follows from the Convention that the decisions of national authorities on the initiation and design of primary prevention measures should be distanced from the assessments of severity of violence and immediacy of risk that the ECtHR applies to protection measures.²⁷⁰ It finds that the obligation to undertake general preventive measures against honour-related violence is triggered by a pattern of violence in the State. The practical implication of this finding is that States must collect data and support research in order to establish in a reliable manner whether there is a pattern of honour-related violence on its territory.²⁷¹

Meanwhile, for individual primary prevention measures, the trigger should simply be a risk of violence that is not negligible. The article suggests that GREVIO might decide to adopt the position that primary prevention in individual situations is only triggered in the case of individuals in a vulnerable position. When it comes to children, a serious threat of any violence triggers the obligation to take individual preventive measures, without any minimum threshold.

3.5. The extent of the positive obligations of the State to prevent honour-related violence: A discussion of the due diligence principle

Lisa Grans, ‘The Concept of Due Diligence and the Positive Obligation to Prevent Honour-Related Violence: Beyond Deterrence’, (2018) 22(5) *International Journal of Human Rights*: 733-755

It emerged already from the early stages of my research that due to the scarcity of jurisprudence elaborating specifically on prevention of private acts of violence, the principle of due diligence would come to play an important role when pinning down the obligations of States to prevent honour-related violence.²⁷² For this reason, I decided to devote the final article to this topic alone. This allowed me to delve into a more general discussion of the character of the due diligence principle and to try to identify the components of the obligation to prevent honour-related violence based on a parallel reading of the standards under the right to life, the right to private

²⁷⁰ Grans (2018 A) 143.

²⁷¹ *Ibid.*, 147.

²⁷² See Grans (2015) 704-705.

life, the prohibition of torture and the prohibition of discrimination.²⁷³ The article focuses on preventive measures of a general character, as opposed to measures taken in response to an individual case. The obligations foreseen here have also been termed systemic due diligence.²⁷⁴ Bourke-Martignoni points out that the due diligence standard originates from the context of diplomatic protection (the responsibility to prevent injury to foreign nationals) and that it is a relatively new concept within human rights law.²⁷⁵ It is expressly included in both the Belém do Pará Convention and the Istanbul Convention and has been applied also in the practice of the ECtHR, the Inter-American human rights bodies and UN treaty bodies and special procedures.

In international law, obligations of conduct are more common than obligations of result, which means that international law tends to focus primarily on the behaviour of States rather than the result of that behaviour.²⁷⁶ The due diligence standard is designed as an obligation of means, not of result.²⁷⁷ It thus allows States to maintain autonomy in discharging their international obligations in line with the notions of State sovereignty.²⁷⁸

My conclusions on the nature of the due diligence principle depart from two ILA studies on due diligence. The ILA Study Group on Due Diligence in International Law concluded that the principle of due diligence does not introduce any general standard that States have to live up to (and in that sense it lacks independent content). Rather, the degree of diligence required is linked to the right and the interests at stake.²⁷⁹ A stricter standard of due diligence applies where the (potential) harm is serious and where vulnerable persons suffer harm.²⁸⁰ Violations of the rights to life and physical and psychological integrity certainly risk causing serious harm. Moreover, persons risking honour-related violence are often in a vulnerable position. This means that a higher level of due diligence applies to its prevention, regardless of which human right we take as the point of departure. I argue that

²⁷³ The reason for including the right to life and the prohibition of discrimination in this article is the reasoning that the measures taken to prevent honour-related violence under either of these rights will also prevent violations of the rights in focus (the right to private life and the prohibition of torture). It is therefore interesting to see whether the jurisprudence foresees similar preventive measures under all these rights.

²⁷⁴ Special Rapporteur on Violence against Women, Annual Report, UN Doc. A/HRC/23/49 (14 May 2013), para. 71.

²⁷⁵ Bourke-Martignoni (2008) 49.

²⁷⁶ Second ILA Report, 2.

²⁷⁷ Explanatory Report to the Istanbul Convention, para. 59.

²⁷⁸ Second ILA Report, 2.

²⁷⁹ *Ibid.*, 21.

²⁸⁰ Riccardo Pisillo-Mazzeschi, 'The Due Diligence Rule and the Nature of the International Responsibility of States', 35 (1992) *German Yearbook of International Law*: 9-51, 44.

vulnerability affects the level of due diligence not only when it relates to preventing violence against a specific individual but also when a group of persons in a vulnerable situation are threatened by violence.²⁸¹

When the acts of States have been scrutinised in international jurisprudence, there has until date been an unfortunate focus on *post facto* measures, such as supporting the victim in various manners and ensuring sanctions for the perpetrator. It is therefore not surprising that Ertürk has noted that, in striving to fulfil their due diligence obligation with respect to violence against women, States have generally responded to violence after it has occurred rather than taking preventive action. The protective measures have mainly consisted of provision of services to women such as telephone hotlines, healthcare, counselling centres, legal assistance, shelters, restraining orders and financial aid to victims of violence.²⁸² There is however clear potential for the use of the due diligence principle in a preventive setting before violence has (re)occurred.²⁸³

It is necessary to stress that the obligation to prevent honour-related violence is complex and does not only consist of obligations of a due diligence character. Notably, the obligations to put in place a legislative framework and structures essential to protecting human rights are immediate obligations of result. Importantly, there is an obligation (not subject to due diligence) to criminalize serious acts of violence, that is, to establish deterrence. Moreover, there is an obligation to introduce as a criminal law offence also less serious acts (such as attempts) when potential victims are vulnerable, such as in the case of children.²⁸⁴

What additional concrete actions the State is required to undertake in accordance with the principle of due diligence will vary depending on the right in question and the circumstances of the matter at hand. In international jurisprudence, States have been given a relatively wide margin in determining how they fulfil this obligation. However, it is clear that the obligation to prevent private acts of violence with due diligence entails a duty for States to take positive action to prevent and protect individuals from violence, punish perpetrators of violence and compensate its victims.²⁸⁵

In order to live up to the obligation to prevent violence with due diligence, States must take the measures that could reasonably be expected and that a well-

²⁸¹ Compare IA CommHR, *Maria Da Penha Maia Fernandes v. Brazil*, para. 56; IACtHR, *Lenahan Gonzalez et al. v. the United States*, para. 129; CAT General Comment No. 2, para. 21.

²⁸² Ertürk (2008) 37.

²⁸³ Grans (2015) 718.

²⁸⁴ Zimmermann (2015) 556. She provides the example of *K.U. v. Finland*, 2 December 2008 (Chamber), Appl. No. 2872/02, para. 140.

²⁸⁵ Due Diligence Report, 2.

administered government would take under similar circumstances.²⁸⁶ A well-administered government would logically do its best to undertake measures that are effective. A requirement for effective measures also forms part of the positive obligations arising under for example the ECHR and the ACHR.²⁸⁷ The article concludes that requiring States to prevent honour-related violence with due diligence therefore has two effects. Firstly, this provides a standard for measuring the efforts that the State has made (that is has really tried to reduce the risk of anyone being subjected to honour-related violence) and secondly, it implicitly brings with it a requirement for certain specific general measures which are essential to effectively preventing honour-relating violence.

Having established the premise that States are required to take measures designed to be effective, the article moves on to explore what this might entail. Some guidance can be found in the checklists elaborated by UN Special Rapporteurs and legal scholars. These stress measures such as changing attitudes, training for all relevant public officials and collection, analysis and sharing of relevant data. In particular the last point is not very prominent in international human rights jurisprudence, to which the article turns next.

The obligation to prevent honour-related violence is analysed from the perspective of the right to life, the right to physical and psychological integrity and the prohibition of discrimination. Measures taken to prevent violations of any of these rights would also prevent violations of the others and international human rights bodies have indeed partly requested States to take similar preventive measures under the different rights. All human rights bodies except the ECHR (which has often gone to great lengths not to specify the general measures required) have required States to undertake awareness raising among the population.²⁸⁸ Arguably, this above all entails changing strict gender roles and the perception that women are subordinate to men. Several key bodies have also demanded that States prevent violence by training key professionals and enhancing cooperation with civil society. Due diligence has for example been interpreted to require States to cooperate with civil society in addressing practices pursued in the name of culture at the community and family level.²⁸⁹ There are also some discrepancies. It appears that mainly the CEDAW Committee has realized the importance of offering programmes for perpetrators of gender-based violence. Also the important task of undertaking data

²⁸⁶ Second ILA Report, 8-10 and Alwyn V. Freeman, 'Responsibility of States for Unlawful Acts of their Armed Forces' in *Collected Courses of the Hague Academy of International Law* (1955-II) 88: 277-278.

²⁸⁷ See Ch. 2.1.3.

²⁸⁸ See e.g. African Commission on Human Rights, *Organisation Mondiale Contre la Torture et Ligue de la Zone Afrique pour la Défense des Droits des Enfants et Elèves (pour le compte de Céline) c. République Démocratique du Congo*, 18 May 2016, Communication No. 325/06, para. 88(iv).

²⁸⁹ IACommHR Annual Report 2002, para. 158.

collection and supporting research has been stressed mainly by the CEDAW Committee and the CAT Committee. In order for the State to be able to establish how best to achieve attitude change and which other measures would be most effective against the forms of honour-related violence prevalent in the State, it must support research and collect statistics and data on the subject. This information must then form the basis for the decision-making regarding the allocation of resources to prevention of violence. Better understanding of the principle of due diligence could have an important role to play in clarifying that effective prevention of honour-related and other gender-based violence needs to be based on solid data and research.

This and several of the previous articles have raised the issue whether one could not expect international human rights bodies to be more specific in spelling out what concrete (general or individual) measures States are legally obliged to take under the relevant conventions in order to prevent different forms of gender-based violence. This fundamental question is discussed more in-depth in Chapter 2.2 of the present PhD thesis.

4. Conclusions

I agree that law ‘has the potential to mobilise movements, to influence political debate and, perhaps, contribute to social change’.²⁹⁰ International human rights law can be a useful, although not necessary very sharp, tool to affect such change. The present research has attempted to sharpen this tool as regards honour-related violence. Although I remain aware of the challenges to implementing human rights norms at the national level when these norms require the changing of deep-rooted practices,²⁹¹ I strongly believe this can be done.

This concluding chapter will first introduce the main findings of the research. It will thereafter discuss the consequences of these findings to the concrete preventive work that States should undertake against honour-related violence. In order to increase the relevance of the conclusions of the research to policy-making, the research indicates concrete measures that a diligent State should take in order to prevent this form of violence. Finally, I outline pertinent issues that would require further research.

4.1. Main findings

This PhD thesis set out to answer the overarching questions whether the obligations of States to prevent honour-related violence can be concretized and whether the principle of due diligence can be helpful in narrowing down the choice of preventive measures available to States. The research concludes that, firstly, States are required by international human rights instruments guaranteeing the right to physical and psychological integrity to take effective measures to prevent honour-related violence both in response to individual cases and generally. Prevention needs to take place at different levels, from the individual and family level to the community level and the societal level. Secondly, this obligation can be further concretized through the application of the principle of due diligence. I specifically submit that the right to physical and psychological integrity that forms part of the prohibition of torture and other ill-treatment and the right to private life needs to be understood as entailing an obligation to try to forestall honour-related violence before it occurs, not only to

²⁹⁰ Stephanie Palmer, ‘Feminism and the Promise of Human Rights – Possibilities and Paradoxes’ in Susan James and Stephanie Palmer (eds.), *Visible Women – Essays on Feminist Legal Theory and Political Philosophy* (Hart Publishing, 2002) 115.

²⁹¹ See e.g. Packer (2002) 15.

address violence that has already happened. These conclusions will be elaborated below.

There is a general obligation on all States having ratified treaties laying down a right to physical and psychological integrity to make more severe private acts of violence unlawful and provide remedies (including ensuring punishment) when this right has been violated. These States must also ensure the adoption of necessary civil legislation, appropriate administrative instructions and an institutional setup sufficient to protect against private acts of violence.²⁹² These obligations may also form part of the customary international law obligation to prevent gender-based violence.²⁹³ Additional efforts by the State are required in relation to persons in a vulnerable situation and children,²⁹⁴ whom the State must protect against private acts of violence by taking additional preventive measures.²⁹⁵ The ECtHR and the IACtHR have stressed that the preventive measures taken should provide effective protection, in particular, of children and other vulnerable persons,²⁹⁶ and other human rights bodies have adopted a similar approach.²⁹⁷

In general, human rights bodies have not been very specific in articulating the individual or general measures required under the respective conventions. Part of the problem is the confusion between protection against and prevention of violence. This research argues that there is potential to improve this situation. Even taking into account the limitations imposed by the principles of subsidiarity, deference and margin of appreciation, when dealing with individual cases, human rights bodies would not be excluded from indicating a set of preventive measures alternative or additional to those taken by the State that would fulfil the obligations of the State in a similar situation, although such a list cannot be exhaustive.²⁹⁸ They could make

²⁹² See Ch. 3.2.

²⁹³ See text accompanying footnote 82.

²⁹⁴ This would also seem to apply in case of serious violations, which I interpret as including violence causing severe harm. There is however little clarity on what constitutes serious violations. I have therefore mainly focused on the implications of vulnerability.

²⁹⁵ Similarly Monica Hakimi, 'State Bystander Responsibility', (2010) 21(2) *European Journal of International Law*: 341–385, 350.

²⁹⁶ See e.g. ECtHR, *Z and Others v. the United Kingdom*, para. 73 and IACtHR, 'Cotton Field' case, para. 408.

²⁹⁷ E.g. the HRC General Comment No. 20 para. 11 and General Comment No. 17, para. 1; CAT Committee General Comment No. 2, para. 21. Moreover, Art. 12(3) of the Istanbul Convention requires States to address the specific needs of persons in a vulnerable situation. Interestingly, CEDAW General Recommendation No. 35 on gender-based violence against women refers to vulnerability only indirectly. See e.g. para. 12.

²⁹⁸ See Ch. 2.2.

similar indications in commenting on State reports submitted under the relevant conventions or, more generally, in issuing new general comments.²⁹⁹

It is clear that the characteristics of each form of gender-based violence needs to be taken into account in its prevention. My research discusses the legal basis and the implications of this requirement. I argue that the characteristics of honour-related violence are relevant to the positive obligations of the State in relation to individuals risking honour-related violence. The legal basis for the demand to take the characteristics of this form of violence into account can be found in the requirement of key human rights bodies that rights must be ‘practical and effective’, or just ‘effective’.³⁰⁰ I submit that this entails the demand that States base the choice of measures on statistics and research. While there is a lack of research on the most effective manners of preventing private acts of violence in general, there is agreement among key intergovernmental organisations that multisectoral, sustained and community-led initiatives are effective against FGM.³⁰¹ This could thus constitute a starting point also when deliberating what kind of measures are effective against honour-related violence in general.³⁰²

The obligation to prevent is examined in relation to both children and adults. My conclusion is that while children in principle enjoy a particularly strong protection of their rights, including the right to physical and psychological integrity, the current interpretation of this right in international human rights law and State practice is not consistent. In relation to children, the CRC requires that all acts of violence, regardless of severity, are prohibited in national law and that national authorities investigate all claims of violence against children with the aim of offering support to the family where needed. In order for more States to adopt this primary prevention approach, international human rights bodies need to be clearer as to the preventive measures that States are obliged to take.³⁰³

The principle of due diligence plays an important role in the arguments underlying my research. The legal obligation to exercise due diligence to prevent violence remains an evolving principle in international law.³⁰⁴ This research discusses the character of the principle and its impact on the prevention of honour-related violence. It finds that the obligation to prevent violence with due diligence has implications not only for the efforts the State must demonstrate in addressing

²⁹⁹ Ibid.

³⁰⁰ See Ch. 2.1.3.

³⁰¹ WHO (2008) 13.

³⁰² Alternatively, the State can support research on what is needed to change the specific attitudes upholding the forms of honour-related violence prevalent on its territory.

³⁰³ Grans (2017) 161.

³⁰⁴ Second ILA Report, 47.

the issue but also for the content of the measures it must undertake.³⁰⁵ Importantly, due to the characteristics of honour-related violence, the preventive measures against it must go beyond those applicable to corporal punishment of children in the home and violence against women.³⁰⁶ There are also other, more specific preventive requirements. The principle of due diligence requires States to address the root causes of gender-based violence.³⁰⁷ This research has stressed one root cause, namely strict gender roles and the perception that women are inferior to men. Chapter 4.2 elaborates on how States are to tackle this root cause.

The scope of the positive obligations of States is context-specific in the sense that when relevant national authorities decide on what action to take to prevent recurrence of honour-related violence, single acts should not be decisive but the evaluation of individual situations should be made based on the combined effects of acts of violence.³⁰⁸ The prevalence of honour-related violence in the country in general is also relevant to the extent of the State's positive obligations. A single case of honour-related violence may require individual protective measures but does not require a response in the form of wide-ranging measures of a general nature. Meanwhile, a pattern of violence requires effective, long-term preventive measures.³⁰⁹

I conclude that applying the principle of due diligence to the prevention of honour-related violence can constitute a double-edged sword. Flexibility in terms of choice of implementing measures is an innate characteristic of the human rights obligations to which the principle of due diligence is applicable. All positive obligations to undertake prevention of honour-related violence are not subject to due diligence. Notably, it is important not to dilute the strict obligation to have in place legislation and structures that uphold the protection of human rights by associating the obligation with the principle of due diligence. At the same time, the principle of due diligence is not only about measuring the total amount of efforts of the State; it takes on a stronger content than this. I find that the principle of due diligence essentially requires States to use their best efforts to take effective measures.³¹⁰ In relation to specific rights and contexts, the due diligence standard takes on a stringency which in practice indirectly entails a demand for certain specific preventive measures. Those rights include the right to protection of physical

³⁰⁵ Grans (2018 B) Ch. 4.

³⁰⁶ Similarly, e.g. Rikki Holtmaat, 'Preventing Violence against Women: The Due Diligence Standard with Respect to the Obligation to Banish Gender Stereotypes on the Ground of Article 5 (a) of the CEDAW Convention' in Benninger-Budel (2008).

³⁰⁷ E.g. Goldscheid and Liebowitz (2015) 308.

³⁰⁸ Grans (2016) 191.

³⁰⁹ *Ibid.*, 198.

³¹⁰ Grans (2018 B) 3.

and psychological integrity contained in the prohibition of torture and other ill-treatment and in the right to private life. This applies in particular in situations where the person(s) risking violence are in a vulnerable situation (such as individuals risking honour-related violence), in which case the due diligence standard is stricter. This stricter standard in practice has the effect that the State may be obliged to take action in situations where it otherwise would not and to take measures that it otherwise would not have been under an obligation to take.³¹¹

Thus, when the requirement for effective measures is applied in practice to the obligation to prevent honour-related violence, it brings with it certain minimum measures that each State where it occurs must take if it has ratified a treaty guaranteeing the right to physical and psychological integrity.³¹² These will be spelled out in the next chapter, dedicated to what the duly diligent State can learn from this research.

4.2. The way forward for duly diligent States

As noted in the previous sub-chapter, there are certain minimum measures that States, which are bound by one of the treaties entailing an obligation to protect the right to physical and psychological integrity discussed in this research, need to undertake against honour-related violence within their jurisdiction. In addition to pinpointing what preventive measures States should take against honour-related violence, I will here summarize what triggers the obligation to take preventive measures and what issues (specific to honour-related violence) national authorities should take into account when dealing with cases where there is (a risk of) honour-related violence.

Certain of the preventive obligations States must initiate against honour-related violence are not subject to due diligence but constitute stricter legal obligations of result. These include criminalisation of severe physical and psychological violence, adoption of civil legislation essential to guaranteeing the right to physical and psychological integrity, including its procedural aspects, and an institutional setup sufficient to protect effectively against honour-related violence (including shelters).³¹³ The existence of the obligation to adopt these minimum measures is well established and their elaboration does not constitute a main focus of this research.

³¹¹ In Grans (2018 B) Ch. 3.2, I describe how international human rights bodies in practice have interpreted the requirement that States exercise due diligence in adopting effective measures.

³¹² They are minimum measures in the sense that they may need to be complemented with other measures depending on the context.

³¹³ Grans (2016) 192.

As the thesis is based on the understanding that prevention of honour-related violence needs to address a key root cause, negative gender stereotypes (including the perception that women are inferior to men), it looks into what other preventive measures to this effect States are obliged to undertake.

My research finds that the prevention of violations of the right to physical and psychological integrity in the form of honour-related violence also entails an obligation to take certain other minimum measures. As noted above, persons threatened by honour-related violence are often in a vulnerable situation. I have argued that vulnerability is relevant in two respects. It arguably lowers the threshold for intervention by requiring the State to interfere in situations where the State would perhaps otherwise not have been obliged to take any measures and it raises the level of due diligence with which the measures chosen are scrutinised. The State may thus have to take measures additional to those it would otherwise have taken, such as measures that go beyond legislation and institutional set-up.³¹⁴ Here, the preventive obligations that are subject to due diligence and the requirement for effective measures come into play. Also the preventive obligations subject to the principle of due diligence in practice require States to take certain specific minimum measures. These include undertaking data collection and analysis and supporting research.

The collection of data and support of research is a precondition to relevant authorities being able to assess whether the prevalence of honour-related violence in the State is such that they need to take other preventive measures. If it emerges that there is a larger number of acts of honour-related violence in the State, this has several implications for the positive obligations of the State. In assessing whether a positive obligation to prevent violence existed in a particular situation, the ECtHR and the Inter-American human rights bodies have taken note of whether the State knew or should have known about the risk of violence.³¹⁵ The ECtHR has for example linked the obligation to take preventive operational measures to the knowledge that the State had or should have had regarding ‘the vulnerable situation’ of women in a particular part of a country.³¹⁶ A finding that a certain group of individuals generally face vulnerability thus affects the level of due diligence also in individual cases, not only on the general level.

Once the State has established the prevalence of honour-related violence on the territory, collection and analysis of data and support of research are needed also in

³¹⁴ *Ibid.*, 200.

³¹⁵ *Grans* (2018 B) footnote 139.

³¹⁶ *Opuz v. Turkey*, para. 160. In this case, the Court referred to the situation of women in South-East Turkey, which is one of the locations in Turkey where honour-related violence is a particular problem (see paras. 105-106 of the judgment).

order to identify the negative gender stereotypes upholding this form of violence and the measures that would be effective to counter them.³¹⁷ I argue that based on the requirement for effective measures, there is a general obligation to apply the data and the findings of the research in undertaking awareness raising aimed at changing these attitudes. How this is best done in practice needs to be determined based on nationally collected data and research. There is an obligation to raise the awareness of the general population about gender-based violence (including honour-related violence) and to change the attitudes of the population regarding such violence. The latter obligation arises under Article 8(b) of the Belém do Pará Convention, Article 12(1) of the Istanbul Convention and Article 5(a) of CEDAW, which oblige States to modify the social and cultural patterns of conduct of men and women, in order to eliminate prejudices and customary practices based on the idea of the inferiority of women or on stereotyped roles for women and men. An obligation to change these underlying attitudes may arguably arise also under other international human rights provisions protecting the right to physical and psychological integrity.³¹⁸

For States having ratified the Istanbul Convention, additional general preventive obligations apply. Chapters III and IV of the Istanbul Convention include obligations to undertake training for relevant professionals on detection and prevention of violence, ensure effective cooperation between all relevant domestic agencies involved and allocate appropriate financial and human resources to the prevention of violence. Similar positive obligations arguably arise under the Belém do Pará Convention and CEDAW by means of the obligation to prevent private acts of violence with due diligence.³¹⁹

States bound by other treaties protecting the right to physical and psychological integrity have also been requested by international human rights bodies to train relevant professionals and ensure cooperation between relevant authorities and between authorities and civil society.³²⁰ The obligation to allocate appropriate resources to prevention is a precondition to States being able to undertake preventive measures. This due diligence obligation would arguably be stricter in relation to the minimum measures mentioned above, namely support of research and data collection and analysis, awareness raising to change attitudes upholding

³¹⁷ Grans (2018 B) 13.

³¹⁸ See Grans (2018 B) Ch. 3.2.4.

³¹⁹ In order to modify the social and cultural patterns of conduct of men and women that are based on the idea of the inferiority of women or on stereotyped roles for women and men with due diligence as required by the Belém do Pará Convention and CEDAW, the above measures are arguably needed. The Belém do Pará Convention expressly refers to most of these obligations, while they have to be read into CEDAW.

³²⁰ Grans (2018 B) Ch. 3.2.4.

honour-related violence, training of professionals and cooperation between key actors.³²¹

The research has sought to throw light on not only what States must do in order to prevent honour-related violence, but also in what situations they are required to take action. In this respect, the triggers of the obligation to prevent are of particular interest. International human rights bodies have not always distinguished clearly between protective and preventive measures, leading to confusion regarding triggers.³²² The prevailing view seems to be that States are obliged to take general preventive measures (as opposed to individual measures) when there is a pattern of violence.³²³ The trigger of the obligation to prevent violence in individual cases differs depending on whether the victim is a child or an adult. The case law of the ECtHR indicates that national authorities must intervene to protect adults only when the violence in question reaches a certain level of severity. These cases apply to violence that has already taken place, and do not shed much light on primary prevention in individual cases. In relation to children, any violence triggers the obligation to intervene. There is thus no minimum level of severity for interference in the case of children.³²⁴ This thesis strongly suggests disconnecting the obligation to prevent private acts of violence from the assessment of the severity of the impending violence also in the case of adults. The threshold for when States must intervene in individual cases may be lower under the Istanbul Convention than under the ECHR.³²⁵

This research has also reached another conclusion regarding the threshold for State interference against honour-related violence. It submits that a real and immediate risk of ill-treatment is not a prerequisite to trigger the obligation to take general preventive measures, nor should it be required in order to trigger preventive individual measures. This understanding needs to underlie national legislation and procedures on intervention into families where there is a risk of violence but no physical violence has yet taken place. As for example McQuigg has pointed out, the threshold for when the State is obliged to intervene to protect individuals against violence within the family cannot be determined through the so-called ‘Osman test’, whereby an immediate risk is required. When there is an immediate risk, it is often already too late to save an individual from such violence. Similarly to her, I submit

³²¹ See Ch. 2.1.4 of the present thesis.

³²² Grans (2018 A) 141.

³²³ See Ch. 3.1.

³²⁴ Grans (2018 A) 142.

³²⁵ See Grans (2018 A) 143. See also footnote 267 above, discussing Council of Europe, *Crimes committed in the name of so-called honour*.

that a serious risk should suffice.³²⁶ A risk of violence against vulnerable persons that is not trivial should as such trigger the initiation of preventive measures under the Istanbul Convention.³²⁷ This standard could be expressly adopted also by the ECtHR.

Furthermore, intervention into families should not be made conditional on violence already having taken place. The obligation to undertake primary prevention in individual cases is undertheorized. However, there exist valid arguments that there is an obligation to take anticipatory measures in individual cases when there are foreseeable threats to life or bodily integrity.³²⁸ This research suggests that the obligation of primary prevention in individual cases notably concerns persons in a vulnerable position (or persons who are vulnerable per se, notably children) and situations where there is a risk of serious violence (threat to life or limb).³²⁹

My research stresses that a strict criminal law approach to prevention of honour-related violence is neither fruitful nor in accordance with international human rights standards. It should be kept in mind that a number of individual preventive measures benefitting vulnerable individuals can be taken before there is reason to resort to criminal law measures, although in some cases they may need to be reinforced with the threat of criminal sanctions. These notably include interventions by social authorities (to which we will return below). In order to constitute effective prevention of harm, the criminal law prohibition of severe violence must also be backed up by civil law injunctions ordering the perpetrator or potential perpetrator to abstain from particular conduct or to do certain things and the possibility to detain persons posing a severe threat to the physical integrity of other family members. I find that national legislation and procedures should provide for the availability of such orders.³³⁰ The ECtHR has required such measures at least in grave situations where there is a risk to life.³³¹ Provision for emergency barring orders and restraining or protection orders are required by the Istanbul Convention, which may widen the approach of the Court in the future.

In individual cases, an important matter in the decision of relevant national authorities on whether and how to intervene is the autonomy of the victims of honour-related violence. The issue of the need for the consent of the person whose

³²⁶ Ronagh J.A. McQuigg, 'The European Court of Human Rights and domestic violence: *Valiulienė v. Lithuania*', (2014) 18(7-8) *International Journal of Human Rights*: 756-773, 762. This was also opinion of Judge Pinto de Albuquerque who dissented from the majority in the *Valiulienė v. Lithuania* case.

³²⁷ Grans (2018 A) 143.

³²⁸ See HRC General Comment No. 35, para. 9 and Renzulli (2016) 61.

³²⁹ Grans (2018 A) 142.

³³⁰ See Grans (2016) 199. See cases cited in *ibid.*, footnote 139 and in Ch. 2.1.3 of this thesis.

³³¹ *Opuz v. Turkey*, para. 148.

rights are violated to State interference is intricate. While the State is obliged to intervene to protect a minor in situations of physical violence regardless of the will of the minor, the same may not be true in case of an adult who does not desire the involvement of the authorities in her or his family. This research finds that when the victim of honour-related violence is an adult, the authorities may intervene regardless of her or his will when the person is in a vulnerable position and in the case of severe violence.³³² Under the ECHR, there are arguments for not only an authorisation but also an obligation to intervene when these circumstances are present and the crime in addition is serious or the risk of further crimes is great.³³³ Under the Istanbul Convention, there must exist a possibility to prosecute certain forms of violence regardless of whether the victim makes a complaint or not.³³⁴ These forms of violence include physical violence, forced marriage and FGM. States are permitted to make a reservation to the Istanbul Convention excluding public prosecution of physical violence in case of minor offences. A number of ratifying States have availed themselves of this possibility.

It is also pertinent to summarize the particular considerations that apply to the prevention of honour-related violence as compared to other forms of gender-based violence. National authorities cannot categorically apply the same general measures against honour-related violence as against violence against women and corporal punishment of children. National measures designed to prevent violence against women need to be complemented in order to be deemed to effectively prevent honour-related violence. The specific characteristics of honour-related violence need to be taken into account in dealing with the phenomenon both at the societal level and in individual cases. A key consideration is to take into account the impact of the strong social norms underlying honour-related violence and its collective character.³³⁵ In order to be effective, general preventive measures against honour-related violence have to include the modification of practices that involve violence by engaging with communities.³³⁶ I argue that when there is a pattern of honour-related violence in certain communities, awareness raising in these communities is required both by treaty provisions prohibiting torture and ill-treatment and by provisions protecting the right to private life.³³⁷ The requirement to support attitude change in practising communities (rather than targeting society in general) sets the

³³² Grans (2016) 200.

³³³ *Ibid.*, 179.

³³⁴ Art. 55 of the Istanbul Convention. See Grans (2018 A) 149.

³³⁵ Grans (2016) 193.

³³⁶ In communities where social norms on honour have a strong standing, criminalizing legislation and general awareness-raising measures will only have a limited preventive effect. See Grans (2018 A), text accompanying footnote 23.

³³⁷ Grans (2015) 715 and Grans (2016) 198.

positive obligations in relation to honour-related violence apart from those applicable to violence against women.³³⁸

In individual cases of honour-related violence, an intervention by social workers or other relevant professionals may in practice be needed in order to try to ensure that no further violence will occur within the family if the threatened family member remains or returns there. However, as of yet there is only limited jurisprudence to support the interpretation that national authorities are obliged to work with perpetrators; they may choose other preventive measures instead.³³⁹ With the influence of the Istanbul Convention, which includes such an obligation, this may change in the future also for States that have not ratified this Council of Europe treaty.³⁴⁰ In relation to children who are victims of honour-related violence, there already exists an obligation under the CRC to support their parents in adopting non-violent manners of raising children, as we shall see next.

The range of protection measures in use against corporal punishment against children in the home is insufficient to protect against the complex phenomenon of honour-related violence against children. These should be complemented in two ways. First, the preventive measures must target all family members, not just the perpetrator. Second, the measures should aim at changing the family's attitudes towards what is considered gender-appropriate behaviour for children.³⁴¹ I find that there is need for a better understanding of the implications of the child's right to family life and the best interests of the child in cases of honour-related violence against children. These should be taken into account while ensuring the child's right to physical and psychological integrity. This notably has the implication that national authorities must support families so that children can remain with their parents (safety allowing) and so that parents can raise their children without resorting to physical or psychological violence. I have suggested that this can be achieved by offering families supportive and educational measures in order to stop them from resorting to (further) violence. A first step is informing parents that all forms of violence against children (including violence used in order to pressure or force children to adhere to social norms on honour) is unlawful, and why. However, this is not sufficient. Parents must be in addition be provided with alternative ways to deal with situations where their children may act contrary to social norms on honour. In order to support families in child rearing, the CRC Committee has suggested preventive measures such as family counselling, parental education and

³³⁸ Grans (2015) 717.

³³⁹ Grans (2016) 194.

³⁴⁰ See discussion in Grans (2018 A) 150-151.

³⁴¹ Grans (2017) 161.

training for relevant professionals such as social workers.³⁴² These measures would be appropriate also to prevent honour-related violence against children. I suggest that the concrete measures could include discussions between social workers and all family members on family honour and how it is linked to girls' behaviour, stressing the importance of girls being able to express themselves, have friends and benefit fully from school education. Importantly, the family also needs to agree how its members will react to any outside pressure to exert stronger control over the behaviour of girls or to punish any perceived transgressions of social norms on honour.³⁴³

Different safe manners of reporting threats of honour-related violence need to exist. Here, the demand that national authorities take the vulnerability of persons at risk into account comes into play. For example, persons suspecting that they risk forced marriage should be able to ask for an intervention by the authorities not only at police stations but also online, by telephone or in person at places that persons risking forced marriage are likely to frequent.³⁴⁴ Functioning procedures for dealing speedily and confidentially with intervention requests also need to exist, including protocols for cooperation between different authorities and with civil society.³⁴⁵

It is essential that the characteristics of honour-related violence be taken into account in risk assessment, including the possible complicity of extended family and other community members.³⁴⁶ In undertaking risk assessments and design of operating procedures as well as the measures through which the safety of the person under threat is assured, authorities need to be aware that families may be pressured into continuing to use honour-related violence also after intervention by police or social authorities.³⁴⁷ These factors also need to be kept in mind when the persons under threat are minors who are taken into care by child protection authorities and the normal procedure would be to inform the parents of allegations of violence and the child's location. In the case of honour-related violence, promptly disclosing information regarding allegations about impeding violence or where a child taken

³⁴² CRC General Guidelines for Periodic Reports, UN Doc. CRC/C/58 (1996), para. 63.

³⁴³ Grans (2017) 161.

³⁴⁴ Grans (2016) 196.

³⁴⁵ These measures are explicitly mentioned in the Istanbul Convention, but could also be interpreted as forming part of the obligation under other conventions to prevent violence with due diligence. On the need for cooperation between different authorities, see e.g. the ECtHR in *E. and Others v. the United Kingdom*, para. 100. The CRC Committee and the CEDAW Committee also stress cooperation with civil society. See e.g. CRC General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/5 (2003), para. 27 and CEDAW Report on Mexico, UN Doc. CEDAW/C/2005/OP.8/MEXICO (27 January 2005), paras. 266; 270; 288. See further Grans (2018 B) Ch. 3.2.4.

³⁴⁶ Grans (2016) 195.

³⁴⁷ *Ibid.*, 199.

into protective custody is placed may not be possible for reasons of the child's safety.³⁴⁸

Finally, I find it important to address the impediments that States may encounter in countering honour-related violence.³⁴⁹ National authorities may fear being labelled racist or discriminatory if adopting targeted measures against honour-related violence. However, persons living in families or communities that resort to honour-related violence have a right to equal protection of their physical and psychological integrity. Not providing such protection for the single reason that the violence is seen as linked to culture and tradition would be discriminatory and violate the right to equal protection of the law. However, preventive measures against honour-related violence need to form part of the general policies of the State that address all forms of violence against women, children and vulnerable groups, not adopted in a manner that singles out honour-related violence as more serious or more worthy of condemnation than other forms of gender-based violence prevalent in the State.

4.3. Need for further research

An issue which could benefit from further research is the potential use of the due diligence principle in relation to the obligation to prevent harmful practices more generally. Could it sharpen the scope of the obligation or indicate a minimum level of core rights?

It would also be interesting to explore whether, and if so on what grounds, acts that are permissible when based on religion are not permissible when based on culture. In other words, is there stronger protection of the right to religion than the right to culture when either clashes with the right to physical integrity?

Another question that remains unanswered is whether the minimum level of severity in respect of violations of physical and psychological integrity differs between positive and negative obligations, that is, depending on whether violence is used by a public official or a private individual.

As noted above, prosecution of honour-related violence against the wish of the victim is a complex issue. For example under CAT and the ICCPR, there is an obligation to punish suspected perpetrators of torture. The possible application of this obligation to private acts of violence would benefit from further legal analysis.³⁵⁰

³⁴⁸ Grans (2017) 160.

³⁴⁹ See also Grans (2017) 158.

³⁵⁰ See Art. 7(1) of CAT and HRC General Comment No. 20, para. 13. See also footnote 224.

When arguing for prevention of honour-related violence in a specific community, one may advance human rights norms that are not internalised by the target group in question. An-Na'Im proposes validating the norms in terms of the values and systems of each culture through dialogue within and between various cultural traditions.³⁵¹ Research comparing the effects of different approaches to changing attitudes to honour-related violence is still not available, but would be highly useful. In order to be able to assert that a certain preventive measure is effective, solid research on its effects is needed.

A more overarching question is if society will eventually get to a point where the use of violence is regulated similarly to the right to life, so that violence is permissible only in specific enumerated circumstances such as warfare, certain officially recognised sports and, in private relationships, between consenting adults in clearly agreed terms. Then the State would have an obligation to render illegal all other private acts of violence. A study of this question from a non-legal, perhaps philosophical, perspective would be extremely interesting.

³⁵¹ Abdullahi Ahmed An-Na'Im, 'State Responsibility to Change Religious and Cultural Laws' in Rebecca Cook (1994) 174.

Svensk sammanfattning (Summary in Swedish)

Avhandlingen bygger på fem artiklar samt denna summerande och analyserande del. Den granskar hur internationell människorättslagstiftning reglerar förebyggandet av hedersrelaterat våld. Den analyserar statens skyldighet att inte bara bestraffa denna form av våld men även skyldigheten att vidta andra förebyggande åtgärder. Den rättsliga diskussionen av hedersrelaterat våld har hittills övervägande fokuserat på kriminalisering. Forskningen lyfter fram frågan om staterna även bör försöka avskaffa de bakomliggande orsakerna till hedersrelaterat våld, framförallt strikta könsroller och negativa könsstereotyper som betraktar män som överordnade kvinnor.

Avhandlingen inleds med en analys av hur internationella människorättsavtal reglerar statens ansvar för privata individers våld mot andra privata individer. Den diskuterar den rättsliga relevansen av att personer som utsatts för eller riskerar hedersrelaterat våld är personer i en utsatt ställning. Den undersöker även vad kravet på effektiva förebyggande åtgärder egentligen innebär i praktiken. Eftersom de krav som internationella människorättsorgan ställt på hur stater ska förebygga våld inom familjen ofta är rätt vaga, tar forskningen ställning till om folkrätten begränsar organens möjlighet att ge mer specifik vägledning till staterna eller om vi i framtiden kan förvänta oss mer konkret vägledning från dessa ifråga om förebyggande av hedersrelaterat våld.

De väldokumenterade rättsliga argumenten rörande statens skyldighet att förebygga våld mot kvinnor är tillämpliga även på hedersrelaterat våld. Avhandlingen undersöker om staten dock bör företa vidare förebyggande åtgärder ifråga om hedersrelaterat våld för att uppfylla sina skyldigheter under olika människorättsavtal. En grundläggande fråga är på vilket sätt hedersrelaterat våld skiljer sig från våld mot kvinnor. Avhandlingen betonar att vid hedersrelaterat våld är motivet att upprätthålla familjens heder, det är ofta flera personers om utövar våldet och omgivningen stöder och uppmuntrar våldet. Hedersrelaterat våld kan också riktas mot pojkar och män, även om dess föremål vanligen är kvinnor och flickor. Forskningen analyserar vad principen om tillbörlig aktsamhet ('due diligence') innebär ifråga om förebyggande av hedersrelaterat våld. Den granskar vad principen, som anses ha uppnått sedvanerättslig status, konkret innebär ifråga om former av hedersrelaterat våld som kränker rätten till privatliv och förbudet mot tortyr.

Forskningen består huvudsakligen av en rättsdogmatisk analys som syftar till att identifiera statens skyldigheter att förebygga hedersrelaterat våld utgående från förbudet mot tortyr och rätten till privatliv. Även potentialen hos framförallt

Istanbul-konventionen och barnkonventionen, som också innehåller krav på att stater upprätthåller respekten för individens fysiska och psykiska integritet, granskas. Forskningsmaterialet utgörs i huvudsak av internationella människorättsinstrument, internationell rättspraxis samt doktrin. Forskningen hänvisar även till förarbeten till konventioner samt så kallad 'soft law' när relevant.

Avhandlingen visar att i enlighet med internationell människorättslagstiftning är stater skyldiga att vidta effektiva åtgärder för att förebygga hedersrelaterat våld både i enskilda konkreta fall och på en allmän nivå. Den visar att tillämpning av principen om tillbörlig aktsamhet kan bidra till att konkretisera vilka dessa åtgärder bör vara.

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